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## APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1082~~

70-52

UNITED STATES OF AMERICA, PETITIONER

v.

MISSISSIPPI CHEMICAL CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED DECEMBER 10, 1970  
CERTIORARI GRANTED FEBRUARY 22, 1971

# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1082

UNITED STATES OF AMERICA, PETITIONER

v.

MISSISSIPPI CHEMICAL CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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**No. 1213-Civil DOCKET**

Title of Case	Attorneys
MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF  vs.  UNITED STATES OF AMERICA, DEFENDANT. CONSOLIDATED WITH CIVIL ACTION No. 1214 PER ORDER FILED 4-8-68	For Plaintiff: John C. Satterfield P.O. Box 466 Yazoo City, Miss. 39194  For Defendant: Robert E. Hauberg P.O. Box 2091 Jackson, Miss. 39205

Basis of Action: Claim for Income Tax Refund

12-15-67 J. S. 5

Date	Plaintiff's Account	Received	Disbursed
12-15-67	Satterfield	15.00	
-29-67	U.S. Treas. CD16-5		15.00

Abstract of costs, To Whom Due, U.S. Clerk. Amount \$15.00.

Date	Filings-Proceedings
12-15-67	COMPLAINT with four copies with Exhibits A through F—filed.
12-15-67	SUMMONS issued and forwarded to U.S. Marshal with four copies and four copies of complaint and exhibits A through F attached for service on U.S. Attorney and Attorney General.
2- 9-68	Copy of Rule as to Non-Resident attorney mailed to John Satterfield.
2-19-68	Answer of Defendant, United States of America, with Certificate of service thereon—filed.
2-28-68	Marshal's return of service on summons executed on the United States of America December 19, 1967 by mailing a copy of the Summons and Complaint to Ramsey Clark, Attorney General, USA, Department of Justice, Washington, D.C. (Registry Receipt attached to return)—and Executed at Jackson, Miss. on December 19, 1967 by delivering a copy of the summons and complaint to Joseph E. Brown, Assistant U.S. Attorney—filed.

Date	Filings-Proceedings
4- 4-68	Plaintiff's Motion to Consolidate Civil Action Nos. 1213 and 1214, with Certificate of Service, filed.
4- 8-68	ORDER: consolidating Civil Action Nos. 1213 and 1214 for hearing and otherwise (with the exception that separate judgments shall be entered in each proceeding) and shall be considered together upon the docket of this Court as if both had been assigned upon the docket Civil Action No. 1213, filed and entered O.B. 1968, Page 91. (Copies mailed attorneys)
5-14-68	DEPOSITION of Walter C. Varlander, Jr., President, New Orleans Bank for Cooperatives, taken by Defendant on April 19, 1968, filed.
11- 6-68	Stipulation as to facts and documents with copies of exhibits 30-A through 32 attached, filed.
11- 5-68	Marshal's return executed on subpoena as to A. E. Beall, filed.
11-11-68	EXHIBITS: P-1 through P-5; D-1 through D-6, filed.
1-17-69	Court Reporter's transcript of hearing before Hon. Harold Cox on November 7, 1968, filed.
[iii] 2-14-69	Finding of Facts and Conclusions of Law . . . "A separate judgment accordingly may be presented for entry in accordance with this opinion in each of these cases.", filed.
2-14-69	Copy of above mailed to attorneys Hauberg and Satterfield.
2-18-69	At direction of Judge Cox, 1st page of above Opinion substituted.
3-24-69	Copy of above Judgment mailed to attorneys of record.
3-24-69	JUDGMENT: Ordered, adjudged and decreed that plaintiff, Mississippi Chemical Corp., a corp., do have and recover of and from the defendant, the United States of America, the principal sum of \$85,298.51, together with interest thereon at the rate of six per cent per annum as follows: From April 4, 1966, upon the sum of \$33,859.37; from June 29, 1967, upon the sum of \$20,006.11, and from July 21, 1967, upon the sum of \$31,433.03, all interest being payable until this judgment is paid, filed and entered O.B. 1969, Page 42.
3-24-69	Final JS-6 Card, filed.
5-21-69	Defendant's Notice of Appeal to the U.S. Court of Appeals for the Fifth Circuit from Judgment entered herein on March 24, 1968, with Certificate of Service, filed.
5-22-69	Certified copy of above Notice of Appeal mailed to Clerk of Fifth Circuit.
6-23-69	Order extending time for filing the record upon appeal fifty (50) days or a total of ninety (90) days from the date of filing of the first Notice of Appeal, filed and entered O.B. 1969, Page 131. (Copy mailed to Fifth Circuit.)

[iv] A true copy, I hereby certify.

ROBERT C. THOMAS,

Clerk.

(SEAL)

By /s/ B. PRICE,  
Deputy Clerk.

Dated:

No. 1214-Civil DOCKET

Title of Case	Attorneys
COASTAL CHEMICAL CORPORATION, PLAINTIFF vs. UNITED STATES OF AMERICA, DEFENDENT CONSOLIDATED WITH CIVIL ACTION NO. 1213 PER ORDER FILED 4-8-68	For Plaintiff: John C. Satterfield P.O. Box 466 Yazoo City, Miss. 39194 For Defendant: Robert E. Hauberg P.O. Box 2091 Jackson, Miss. 39205

Basis of action: Claim for Income Tax Refund

12-15-67 J. S. 5

Date	Plaintiff's account	Received	Disbursed
12-15-67	Satterfield	15.00	
-29-67	U.S. Treas. CD 16-5		15.00

Abstract of Costs To Whom Due U.S. Clerk, Amount 15.00.

Date	Filings-Proceedings
12-15-67	COMPLAINT original and four copies—with Exhibits A through F attached—filed.
12-15-67	SUMMONS issued and forwarded to U.S. Marshal with Four copies Summons—complaint and exhibits attached—for service on U.S. Attorney and Attorney General.
[v] 2-19-68	Answer of Defendant, United States of America, with Certificate of Service—filed.
3-1-68	Marshal's return on summons, executed, filed.
4-4-68	Plaintiff's Motion to Consolidate Civil Action Nos. 1213 and 1214, with Certificate of Service, filed.
4-8-68	ORDER: consolidating Civil Action Nos. 1213 and 1214 for hearing and otherwise (with the exception that separate judgments shall be entered in each proceeding) and shall be considered together upon the docket of this Court as if both had been assigned upon the docket Civil Action No. 1213, filed and entered OB, 1968, Page 91. (Copies mailed attorneys)

Date	Filings-Proceedings
5-14-68	DEPOSITION of Walter C. Verlander, Jr., President, New Orleans Bank for Cooperatives, taken by Defendant on April 10, 1968, filed in Civil Action No. 1213.
11- 6-68	Stipulation as to Facts and Documents with Exhibits (In Box) attached, filed.
11-11-68	EXHIBITS: P-1 through P-5; D-1 through D-6, filed.
1-17-69	Court Reporter's transcript of hearing before Hon. Harold Cox on November 7, 1968, filed. (Transcript placed in Civil Action No. 1213.)
2-14-69	Finding of Facts and Conclusions of Law : . . . "A separate judgment accordingly may be presented for entry in accordance with this opinion in each of these cases," filed.
2-14-69	Copy of above mailed to attorneys Hauberg and Satterfield.
[vi] 2-18-69	At direction of Judge Cox, 1st page of above Opinion substituted.
3-24-69	JUDGMENT: Ordered and adjudged that plaintiff, Coastal Chemical Corp. recover from defendant, U.S.A., the sum of \$265,044.35, plus interest thereon as provided by law; no costs be assessed herein, filed and entered. O.B. 1969, Page 41. (Copy mailed attorneys of record.)
3-24-69	Final JS-6 Card. filed.
5-21-69	Defendant's Notice of Appeal to the U.S. Court of Appeals for the Fifth Circuit from Judgment entered herein on March 24, 1969, with Certificate of Service, filed.
5-22-69	Certified copy of above Notice of Appeal mailed to Clerk of the Fifth Circuit.
6-23-69	Order: extending time for filing record on appeal to 90 days from date of filing first notice of appeal—filed and entered O.B. 1969, Page 126.
6-23-69	Copy of above order forwarded to Fifth Circuit Court of Appeals.

A true copy, I hereby certify.

ROBERT C. THOMAS  
Clerk.

By: /s/ B. PRICE,  
Deputy Clerk.

(SEAL)

In the United States District Court for the Southern Judicial  
District of Mississippi, Western Division

Civil Action No. 1213

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT

(Filed Dec. 15, 1967)

COUNT I

COMES Mississippi Chemical Corporation, a corporation organized under the laws of the State of Mississippi, and files this suit against The United States of America and for cause of action says:

I.

Plaintiff is a corporation organized under the laws of the State of Mississippi with its domicile and principal place of business in Yazoo City, Mississippi, in the Southern District of Mississippi, Western Division, of the United States District Court.

II.

Defendant is The United States of America upon whom service of process may be had by service of summons upon the United States District Attorney of Jackson, Mississippi, and by sending a copy of the summons and complaint to the Attorney General of the United States at Washington, D.C.

III.

This is an action of a civil nature for the recovery of United States income taxes and interest paid thereon, which income taxes and interest were erroneously or illegally assessed and wrongfully collected.



## IV.

Plaintiff is organized under the General Corporate Laws of the State of Mississippi but is a cooperative qualified to receive financing under the Statutes of the United States of America as a cooperative. It is and since the beginning of its operation has been engaged in manufacturing fertilizer and distributing same primarily to its stockholder-patrons.

## V.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1961, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$18,464.09 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$18,464.09 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1961, the sum of \$28,630.64 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 11341(b) of Title 12, United States Code.

## VI.

The Farm Credit Act of 1955 (Section 1134d (a)(3) of Title 12, USC) requires a borrower from a Bank of Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a pay-

ment of fifteen per cent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1961, plaintiff paid the New Orleans Bank for Cooperatives \$18,464.09 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d (a)(3) of Title 12, United States Code. Plaintiff would show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1961, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said Bank for said payment had no market value for the reasons hereinafter set forth.

#### VII.

Section 1134 1(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1961, plaintiff borrowed money from the New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as patronage dividends in the stated amount of \$28,630.64. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$28,630.64 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30, 1961.

#### VIII.

(a) That the amount paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal year ending June 30, 1961, for the privilege of borrowing from said Bank is a proper deductible expense either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives

was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as a patronage dividend for the fiscal year ending June 30, 1961, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

#### IX.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1961, plaintiff paid additional income taxes of \$24,489.26 plus applicable interest of \$7,728.69 thereon for its fiscal year ending June 30, 1961. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$24,489.26 was erroneous.

#### X.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1961, said Claim being for a refund of income taxes erroneously assessed and paid in the amount of \$24,489.26, plus applicable interest of \$7,728.69. Said Claim for Refund (including all Exhibits attached thereto) is attached hereto as Exhibit A and made a part hereof as if copied herein.

#### XI.

That by Certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending

June 30, 1961 had been denied. There is attached hereto as Exhibit B letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1961.

WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$24,489.26 and applicable interest paid of \$7,728.69 and interest thereon as allowed by law; and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

## COUNT II

### I.

Plaintiff re-alleges and re-avers each and every allegation of paragraphs I through IV of Count I above.

### II.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1962, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$16,421.75 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$16,421.75 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1962, the sum of \$27,489.40 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 11341(b) of Title 12, United States Code.

## III.

The Farm Credit Act of 1955 (Section 1134d (a)(3) of Title 12, USC) requires a borrower from a Bank of Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a payment of fifteen percent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1962, plaintiff paid the New Orleans Bank for Cooperatives \$16,421.75 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d (a)(3) of Title 12, United States Code. Plaintiff would show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1962, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said Bank for said payment had no market value for the reasons hereinafter set forth.

## IV.

Section 1134 1(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1962, plaintiff borrowed money from the New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as patronage dividends in the stated amount of \$27,489.40. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$27,489.40 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30, 1962.



## V.

(a) That the amount paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal year ending June 30, 1962, for the privilege of borrowing from said Bank is a proper deductible expense either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as a patronage dividend for the fiscal year ending June 30, 1962, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

## VI.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1962, plaintiff paid additional income taxes of \$22,798.79 plus applicable interest of \$5,504.76 thereon for its fiscal year ending June 30, 1962. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$22,798.79 was erroneous.

## VII.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1962, said Claim being for



a refund of income taxes erroneously assessed and paid in the amount of \$22,798.79 plus applicable interest of \$5,504.76. Said Claim for Refund for fiscal year ending June 30, 1962, (including all Exhibits attached thereto), is attached hereto as Exhibit C and made a part hereof as if copied herein.

### VIII.

That by Certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending June 30, 1962, had been denied. There is attached hereto as Exhibit D letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1962.

WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$22,798.79 and applicable interest paid of \$5,504.76 and interest thereon as allowed by law; and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

### COUNT III

#### I.

Plaintiff re-alleges and re-avers each and every allegation of paragraphs I through IV of Count I above.

#### II.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1963, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$18,863.35 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$18,863.35 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1963, the sum of \$25,152.83 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 1134 1(b) of Title 12, United States Code.

### III.

The Farm Credit Act of 1955 (Section 1134d (a)(3) of Title 12, USC), requires a borrower from a Bank of Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a payment of fifteen per cent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1963, plaintiff paid the New Orleans Bank for Cooperatives \$18,863.35 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d (a)(3) of Title 12, United States Code. Plaintiff would show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1963, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said Bank for said payment had no market value for the reasons hereinafter set forth.

### IV.

Section 1134 1(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1963, plaintiff borrowed money from the New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as

patronage dividends in the stated amount of \$25,152.83. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$25,152.83 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30, 1963.

## V.

(a) That the amount paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal year ending June 30, 1963, for the privilege of borrowing from said Bank is a proper deductible expense either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as a patronage dividend for the fiscal year ending June 30, 1963, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

## VI.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1963, plaintiff

paid additional income taxes of \$21,113.87 plus applicable interest of \$3,664.14 thereon for its fiscal year ending June 30, 1963. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$21,113.87 was erroneous.

### VII.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1963, said Claim being for a refund of income taxes erroneously assessed and paid in the amount of \$21,113.87 plus applicable interest of \$3,664.14. Said Claim for Refund for fiscal year ending June 30, 1963, (including all Exhibits attached thereto), is attached hereto as Exhibit E and made a part hereof as if copied herein.

### VIII.

That by certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending June 30, 1963, had been denied. There is attached hereto as Exhibit F letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1963.

WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$21,113.87 and applicable interest paid of \$3,664.14 and interest thereon as allowed by law; and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

/s/ John C. Satterfield

JOHN C. SATTERFIELD

*Attorney for Mississippi Chemical Corporation,*

*P.O. Box 466, Masonic Building,*

*Yazoo City, Mississippi.*

Of Counsel:

J. Dudley Buford

P. O. Box 1172

Jackson, Mississippi.

Hollaman M. Raney

P. O. Box 388

Yazoo City, Mississippi.

ATTACHMENT TO AND MADE A PART OF CLAIM: (FORM 843)  
 Filed by: Mississippi Chemical Corporation, P.O. Box 388,  
 Yazoo City, Mississippi

For the fiscal year ended June 30, 1961

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

(d) *Interest* \$18,464.09

The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100 par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to 15 per cent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the above amount.

Cost incurred in purchasing class C stock are not deductible. See Rev. Rul. 65-241.

(e) *Patronage Dividend on "C" stock* \$28,630.64

The taxpayer received class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The amount was not included in income as having no value.

The Bank, in its notification of patronage refund to its shareholders, recommends that the amount be reflected at face value and a credit to operating income.

The "C" stock is assigned as collateral against loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount—the same as any other collateral having face value. The amount above, is therefore includable in income under section 61 of the 1954 Code.

The income tax related to (d) above amounted to \$9,601.33 and was paid as shown by attached copy of letter accompanying the remittance.

The income tax related to (e), amounting to \$14,87.93, was agreed to in Form 870 which was sent to Mr. Julian W. Johnson, Appellate Conferee, Internal Revenue Service, U.S. Treasury Department, 711-2121 Building, 2121—8th Avenue, North, Bir-



mingham, Alabama 35203. The above amount of income tax was paid June 29, 1967 as part of a check for \$20,006.11, which included applicable interest.

It was understood with Mr. Johnson that the execution and filing of the foregoing Form 870 would not preclude the filing of a Claim (Form 843). In fact it was understood that a claim would be filed as a basis of litigation in the applicable U.S. District Court.

The total income tax represented by (d) and (e) above amounts to \$24,489.26 shown as (g) on Form 843.

It is claimant's position that the interest represented by (d) was deductible and further that the class C stock referred to was not worth \$100.00 per share during the fiscal year ended June 30, 1961.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1962 and 1963.

MISSISSIPPI CHEMICAL CORPORATION,  
Post Office Box 388, Yazoo City, Mississippi 39194,  
April 4, 1966.

Mr. J. G. MARTIN, Jr., District Director,  
Internal Revenue Service, U.S. Treasury Department,  
301 North Lamar Street, Jackson, Mississippi 39202.

Re Your File Form L-191B-430:VBH:mnm, Mississippi  
Chemical Corporation, Yazoo City, Mississippi.

DEAR SIR: We have examined copy of an examination report explaining proposed adjustments to the tax liability of Mississippi Chemical Corporation, letter of transmittal being dated March 14, 1966. This includes the items hereinafter described representing the amounts paid by the taxpayer as one of the requirements to enable it to obtain loans from the New Orleans Bank for Cooperatives for which said Bank has agreed to issue Class C stock at par value of \$100 per share. In each of the years stated the taxpayer deducted the amount involved as interest upon or cost of acquisition of such loans, such stock



being without market value. Deficiencies are proposed based upon the disallowance of such items under Rev. Rul. 65-241.

Because of the existence of such ruling we are not including these items in the protest we are filing in behalf of the taxpayer requesting a hearing as to the items other than those here listed and the items included in "Computation of Income Tax for Partial Agreement", as to which you are handed a check today. Such items are as follows:

Fiscal year ending 6/30/61—page 7 (explanation page 9) "Interest"  
\$18,464.09

Fiscal year ending 6/30/62—page 13 (explanation page 15) "Interest"  
\$16,421.75

Fiscal year ending 6/30/63—page 20 (explanation page 22) "Interest"  
\$18,803.35

We have computed the additional tax and interest arising from such items as follows:

Fiscal year 6/30/61	
Tax -----	\$9,601.33
Interest -----	2,610.51
Fiscal year 6/30/62	
Tax -----	8,539.31
Interest -----	1,809.40
Fiscal year 6/30/63	
Tax -----	9,808.93
Interest -----	1,489.89
Total -----	\$33,859.37

In accordance with our discussion with Mr. Broom, we are enclosing check of the Mississippi Chemical Corporation in the sum of \$33,859.37 and will expect to file claim for refund in that amount within the next few days.

Yours very truly,

MISSISSIPPI CHEMICAL CORPORATION,  
By, JOHN C. SATTERFIELD, *General Counsel.*

JCS:md

Enclose, Check

# STATEMENT CONCERNING PATRONAGE REFUNDS RECEIVED FROM THE NEW ORLEANS BANK FOR COOPERATIVES IN THE FORM OF CLASS "C" STOCK OF SUCH BANK

You are handed herewith the following items which are made a part of this statement by reference:

1. Letter from Mississippi Chemical Corporation and Coastal Chemical Corporation to the Examining Agent, Mr. John J. Koch, dated November 1, 1965.

2. Letter of Honorable D. R. Stump, Vice President of the New Orleans Bank for Cooperatives, dated March 22, 1966, including "Statement of Policy of New Orleans Bank for Cooperatives on Retirement of Government Capital" adopted June 20, 1959 and reapproved February 25, 1966; and statement by years of the amount of Class "C" stock issued by the New Orleans Bank for Cooperatives.

3. Letter from N. F. Pendleton, President of the New Orleans Bank for Cooperatives (now deceased), dated December 22, 1965, with eight attachments.

The facts which may be material are delineated by Regulation Sec. 1.61-5 implementing TIR No. 69, effective December 3, 1959. It provides that non-cash patronage refunds are includable in the gross income of patrons to the extent of the fair market value of the document notifying the patron of the amount of the allocation made to him at the time of its receipt by the patron. The provision particularly in point is as follows:

Any document which is payable only at the discretion of the cooperative association or which is otherwise subject to the conditions beyond the control of the patron shall be considered not to have any fair market value at the time of its receipt by the patron, unless it is clearly established to the contrary.

The enclosures demonstrate conclusively that the Class "C" stock of NOBC is payable only at the discretion of that cooperative association and also is otherwise subject to conditions beyond the control of the patron. No facts here "clearly establish to the contrary", i.e., that such stock had any market value or, particularly, that its market value was the full amount of the par value thereof. The proposed adjustment is in the full amount of the par value of such patronage refunds.

As detailed in our letter of November 1, 1965, the law prohibits the payment of dividends on Class "C" stock and, of course, no interest is payable thereon. It is in effect non-voting stock in the hands of the corporation after such corporation has acquired one share thereof. The Bank was established under the statute on the basis of "one member one vote" regardless of the amount of stock which the member may thereafter receive as patronage refunds or otherwise.

The change in the action by the NOBC concerning the payment of Class "A" stock owned by the government which occurred after December 22, 1965, when Mr. Pendleton wrote his letter, and before March 22, 1966, when Mr. Stump wrote his letter, conclusively establishes that the "document . . . is payable only at the discretion of the cooperative association". No payment of Class "C" stock on a revolving fund basis can begin until all Class "A" stock is paid in full, as well as outstanding Class "B" stock of the year affected. On December 22, 1965, the Board of Directors of the NOBC expected to issue debentures obtaining sufficient funds to acquire all outstanding Class "A" stock on June 30, 1966. On February 25, 1966, the Board of Directors reconsidered such action, deferred any such payment "until such time as the officers of the Bank determine it will be advantageous to the Bank and its borrowers for the Board to reconsider this subject", and readopted the original schedule attached to the letter of Mr. Stump, under which all Class "A" stock would be retired in 1976. The actual experience through 1965 shown in the attachment indicates that such retirement could be completed under the schedule in 1975. Hence, the commencement of retirement of any Class "C" stock has been deferred for an additional nine years, through the exercise of the discretion of the cooperative association involved, i.e., the New Orleans Bank for Cooperatives.

Subject to the "conditions beyond control of the patron" which are mentioned below, if the revolving retirement of the NOBC Class "C" stock begins in 1975, and if the earnings of the cooperative bank continue to be comparable to those of recent years, it appears that the revolving basis of payment may be sought to be accomplished within ten or fifteen years from the date of the beginning of such process. Hence, optimistically, it appears that the Class "C" stock received by the taxpayer during the fiscal year ending June 30, 1961, may be paid between 1980 and 1985; such stock received for the fiscal year ending June 30, 1962, may be paid between 1981 and 1986; such stock received for the fiscal year ending June 30, 1963, may be paid between 1982 and 1987.

The question here should be determined "at the time of its receipt by the patron". At such time the stock was and it still is "payable only at the discretion of the cooperative association"; it now appears that such payment may occur some

twenty years after its receipt, subject to the uncertainties mentioned below; with no interest or dividends payable on the stock, we cannot see how the same can be considered to have market value. If it had any market value, the same would be nominal.

In addition to the legally established fact that this stock is payable only at the discretion of the cooperative association, the same is likewise "subject to the conditions beyond the control of the patron". This includes the following:

1. The amount of future earnings of the Bank.
2. The state of the law and regulations relating to banks for cooperatives in the years succeeding 1980. If, for example, the law were amended to require the payment of all current earnings in cash (as is now advocated by some parties), no Class "C" stock could be retired.

3. The discretion of the Board of Directors of the cooperative association, i.e., the Bank. The change that occurred in early 1966 is a complete and perfect illustration thereof. Many factors affect the earnings of the cooperative bank. For instance, it has attempted to maintain a "spread" between the cost of money borrowed by it and the rate of interest paid to it of at least 100 points. Several years ago it was maintaining a spread of from 150 points to 170 points. Recently this has dropped to a range of between 70 points and 100 points, and the last debentures of the Bank were sold at an interest rate of 5.4 percent while it is lending money at an interest rate of 5.5 percent, only a 10-point spread. It will be necessary for the Bank to take action to assure itself of a proper spread and its effect upon the business of the Bank is necessarily unknown.

In our letter of November 1, 1965, a copy of which is attached hereto, we went into more detail concerning the facts affecting the fair market value at the time of receipt by the patron of the right to receive Class "C" stock of NOBC.

With reference to the statement in the examination report that Mississippi Chemical Corporation and Coastal Chemical Corporation are the only cooperatives entering Class "C" stock received as patronage refunds as having no market value, we call attention to the letter dated December 22, 1965, signed by the President of the New Orleans Bank for Cooperatives, stating, "We do know specifically of one other cooperative in this district, other than yourselves, which writes the stock off for tax

purposes and, according to information given to us, there are cooperatives in other districts which do likewise." In fact, we have found that there are numerous cooperatives throughout the country which follow the same procedure employed by the taxpayers here in dealing with Class "C" stock of the numerous banks for cooperatives throughout the country.

In this connection, it should be noted as discussed in the letter from Mr. Pendleton that most of the cooperatives receiving such patronage refunds seem to be exempt cooperatives under Section 521, and hence the entry of such stock at face value or any other value would not affect their income tax. It is also stated by Mr. Pendleton in said letter with reference to "exempt cooperatives" and non-exempt cooperatives that, "In either case, if the cooperative sets the stock up at face value, the corresponding income would normally be credited to pool earnings but also deducted by the cooperative as a patronage refund except for the nonmember portion, in the case of non-exempt cooperatives."

However, the action of other cooperatives is immaterial. The regulations apply specifically to this type of stock patronage refund as outlined above.

## II.

### STATEMENT CONCERNING CLASS "C" STOCK IN THE NEW ORLEANS BANK FOR COOPERATIVES PURCHASED AS AN "INTEREST OVERRIDE" AS A CONDITION PRECEDENT TO OBTAINING AND MAINTAINING LOANS FROM SUCH BANK

The Farm Credit Act of 1955 revised the capital structure of the twelve Banks for Cooperatives and the Central Bank for Cooperatives by providing for three classes of stock. See 12 USCA Sec. 1134d. Class "A" stock is government capital and is held by the Governor of the Farm Credit Administration on behalf of the United States. Class "A" stock was issued in exchange for stock held in the Banks for Cooperatives by the Governor on the effective date of the Farm Credit Act of 1955.

Class "B" stock is investment stock and provision is made for the payment of dividends not to exceed 4 per cent per annum. It is non-voting stock and it is owned principally by cooperative associations.

Class "C" stock is issued to farmer-cooperatives which borrow from the Banks for Cooperatives. A farmer-cooperative



Acquires Class "C" stock in two ways in doing business with a Bank for Cooperatives:

- (1) As a patronage dividend. 12 USCA Sec. 1134e(b).
- (2) Required purchase as a condition to a loan. 12 USCA Sec. 1134d(a)(3).

So long as a Bank for Cooperatives has Class "A" stock outstanding, all earnings (after the payment of a franchise tax, setting aside of required reserves and dividends on Class "B" stock) must be allocated to patron-cooperatives as patronage dividends in the form of Class "C" stock. 12 USCA Sec. 1134e (a). When all government capital (Class "A" stock) in a Bank for Cooperatives has been retired, it loses its exemption from income taxes. See 12 USCA Sec. 1138c.

In 1964 Congress passed P. L. 88-528, which amended the law pertaining to patronage dividends of Banks for Cooperatives to provide that for any fiscal year that a Bank for Cooperatives is subject to Federal income taxes, it shall pay in money rather than Class "C" stock such portion of its taxable income as is necessary to permit it to issue qualified written notices of allocation for the balance. See 12 USCA Sec. 1134e (b).

The Farm Credit Act of 1955 also requires a borrower from a Bank for Cooperatives to invest quarterly in Class "C" stock in an amount equal to not less than 10 percent nor more than 25 percent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has prescribed 15 percent. Payments for such "C" stock are made quarterly or when the regular interest payments of the borrower are made. See 12 USCA Sec. 1134d(a)(3). It is this required purchase of Class "C" stock that is involved here.

It is important to note that the purpose of issuing Class "C" stock in both cases is identical—retirement of Class "A" stock. For every dollar of Class "C" stock issued either by way of patronage dividend or by way of required purchase, a dollar of Class "A" stock is retired. 12 USCA Sec. 1134d(a)(1). The concept of Class "C" stock was created by the Farm Credit Act of 1955 for the sole and express purpose of retiring government capital.

For the reasons outlined herein, we believe that the required purchase of such Class "C" stock should not be capitalized as an



asset but should be charged off as an expense for both book and tax purposes. In part, this view stems from what we believe to be the proper treatment for the receipt of Class "C" stock as patronage dividends.

The Internal Revenue Service issued Technical Information Release No. 69 on February 14, 1958, in which it announced that it would conform with the principles enunciated by court decisions in connection with the tax treatment of allocations of patronage dividends by cooperative associations to its patrons. The cases referred to were the *Long Poultry Farms* case (249 F.2d 726) decided in 1957 and the *Carpenter* case (219 F.2d 635) decided in 1955. These cases had held that a patron was required to report non-cash patronage dividends received from cooperative associations as income only to the extent that such non-cash patronage refunds had fair market value. Where such patronage refunds had no fair market value, the patron was not required to include them in his gross income in the year the notice of the non-cash refund was received.

Regulation Sec. 1.61-5 implementing TIR No. 69 became effective December 3, 1959. It provides that non-cash patronage refunds are includable in the gross income of patrons to the extent of the fair market value of the document notifying the patron of the amount of the allocation made to him at the time of its receipt by the patron. Any document which is payable only at the discretion of the cooperative association or which is otherwise subject to the conditions beyond the control of the patron shall be considered not to have any fair market value at the time of its receipt by the patron, unless it is clearly established to the contrary.

*Required Purchase of Class "C" Stock is Deductible:* The reasons for our position that the required purchase of Class "C" stock is a deductible expense are that such amount is either—

(1) An additional interest expense under Sec. 163 of the Internal Revenue Code, or

(2) An ordinary loss under Sec. 165 of the Internal Revenue Code.

*Required purchase of Class "C" stock is deductible as an interest expense:* Sec. 163, IRC provides as follows: "There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness." The courts have said that the

term "interest" is the amount which one has contracted to pay for the use of borrowed money. Where a borrower is required to pay something in addition to what is denominated as "interest", in order to obtain the loan, the additional payment may also be deducted as an interest expense. See *Wiggin Terminals, Inc. v. U.S.* (1st Cir. 1929) 36 F.2d 893; *Court Holding Company*, 2 TC 531 affd. 324 U.S. 331 (1945); *L. R. Heating Co.*, 28 TC 894.

Loan agreements with the New Orleans Bank for Cooperatives required Mississippi Chemical Corporation and Coastal Chemical Corporation to pay the interest charges specified plus an additional payment equal to 15 per cent of the total interest paid each quarter. This 15 per cent interest override paid during the years in question in the form of required purchase of Class "C" stock was required as a condition of the loan, the same as a basic interest charge. When this 15 per cent interest override is added to the basic rate charged by the New Orleans Bank for Cooperatives, the total combined rate is still reasonable and typical for a total interest charge. In order to prove that this total payment is deductible as *interest*, we have demonstrated that Class "C" stock is not really "stock" in the normal sense of the word.

We content that Class "C" stock is not actually stock for either accounting or tax purposes. What it is, is a euphemistic term for an additional interest charge imposed by the Bank for Cooperatives for the use of money. What are the normal attributes of stock? Stock will normally have one or more of the following characteristics:

- (1) A right to dividends.
- (2) One or more votes per share.
- (3) A stock certificate to evidence its issue.
- (4) Possibility of appreciation in value.
- (5) Transferability.
- (6) Market value.
- (7) Collateral value.

See letter of November 1, 1965, to the Examining Agent, Mr. Koch, for a full discussion of each of the above items.

A fundamental rule in Federal Income Tax law is that the substance of a transaction rather than mere form controls tax liability. This rule is most frequently asserted by the government against the position taken by the taxpayer, often with

great success. Certainly the rule should be equally applicable when applied by the taxpayer against the contention of the government.

Cases are legion where something called stock by the taxpayer is held to be something else, such as a bond or note, for the purpose of federal income taxation. These cases make it quite clear that the name by which an instrument is called may be relatively unimportant for tax purposes. What is important are the characteristics of the instrument in question. An instrument may be stock within the meaning of State Corporation Law, yet it may be considered as a debt instrument for the purpose of income taxes. As noted above, when the characteristics of Class "C" stock are carefully analyzed, it becomes evident that while the law relating to Banks for Cooperatives calls this instrument "stock", it is clearly not stock within the meaning of Federal Income Tax law.

*Required purchases should be treated consistent with patronage dividends:* The record shows that Class "C" stock is likewise issued as a patronage dividend. Under Reg. Sec. 1.61-5 non-cash dividends received from a cooperative are includable only to the extent of fair market value, and this is presumed to be lacking where redemption rests in the discretion of a board of directors. We believe that it is not open to serious question that Class "C" stock received as a patronage dividend should not be taken into income because of its lack of fair market value. Incidentally, we see no reason for doubting that Reg. Sec. 1.61-5 and the Sections 1381 through 1388, IRC (Subchapter T) pertaining to cooperatives and their patrons applies to the Banks for Cooperatives and their patrons. Reg. Sec. 1.1381-1 provides that Subchapter T applies "to any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons." Reg. Sec. 1.1388-1(e) defines the term "patron" to include cooperative associations. Reg. Sec. 1.65-1 contains no definitions, but we believe the above definitions are clearly applicable.

This being the case, it certainly is not logical to conclude that Class "C" stock which is *purchased* is somehow different, and should be set up as an asset at full face value. If "C" stock has *no value* when received as a patronage dividend, it seems incontrovertible that it likewise has *no value* when purchased. In both cases it is exactly the same thing, and is issued for exactly

the same purposes. Bank officials tell us that it is treated the same on the books of the Bank.

*Required purchase of Class "C" stock is quite different from other Federal Agency stock purchases:* The next feature that should be noted is that the amount of the required purchase of Class "C" stock is tied directly to the amount of interest paid. During the years involved, the amount of required purchase established by the New Orleans Bank for Cooperatives was 15 per cent. In any event, this is different from the required purchase of stock in the Federal National Mortgage Association and Production Credit Associations, which also require certain stock purchases as a condition to doing business.

In the case of the Federal National Mortgage Association ("Fannie Mae") the law requires that when a mortgage is sold to Fannie Mae, the seller must purchase stock in Fannie Mae in an amount equal to 3 per cent of the mortgage sold. However, Fannie Mae stock has a market value and may be and is frequently sold. This is in contrast to Class "C" stock in a Bank for Cooperatives, which has no market value and in which there are no known instances of its ever having been sold to another purchaser.

Likewise in the case of PCA, the borrower is required to have invested in Class "B" stock an amount equal to 5 per cent of the principal borrowed, but this Class "B" stock has a very definite market value and as a matter of practice we understand that PCA's repurchase that stock at cost when a loan is retired. Again this is in sharp contrast to Class "C" stock in a Bank for Cooperatives, which has no economic value but is merely imposed by way of additional interest cost.

It is significant to note that in the case of both the required purchase of Fannie Mae stock and PCA stock, the amount of stock required to be purchased is based on principal and thus it needs to be purchased only once. Class "C" stock purchased in a Bank for Cooperatives is based on interest paid by the borrower and it is thus in the nature of an additional and recurring item of expense. This distinction is very important.

*Provisions on guaranty fund equivalents indicates that true stock is not involved:* Another reason for concluding that Class "C" stock is not really stock is the fact that the law creating the Banks for Cooperatives provides that where a cooperative association is not authorized under the laws of the state in which



it is organized to hold stock in a Bank for Cooperatives, the Bank shall, in lieu thereof require the association to pay into or have on deposit in a guaranty fund of the Bank a sum equal to the amount of the Class "C" stock which the association would otherwise be required to purchase. See 12 USCA Sec. 1134d(b). It is interesting to note that the holder of guaranty fund equivalents of Class "C" stock have the same rights and status as a holder of Class "C" stock and that the rights and obligations of the Bank as respects such guaranty fund equivalent are identical to the rights and obligations as respects Class "C" stock. This further tends to support the view that Class "C" stock is in reality not stock but merely an additional payment which must be made to the Bank for Cooperatives in order that it might have a greater net income, which in turn might be used to retire government capital.

*Tax treatment on redemption of Class "C" stock:* The statute provides that on retirement of Class "C" stock: "After retirement of all Class 'A' stock, Class 'C' stock also may be retired at par by calling the oldest outstanding Class 'C' stock, but Class 'C' stock that was issued for a fiscal year period shall not be called for retirement until all Class 'B' stock that was issued during or prior to that fiscal year has been called for retirement." 12 USCA Sec. 1134d(a)(3).

When the Bank for Cooperatives retires this Class "C" stock, will the transaction be viewed as a true stock redemption resulting in no taxable income to the holder because redeemed at par, or will the proceeds properly be treated as ordinary income to the recipient because it is in the nature of a dividend? Section 302, IRC relates to the matter of distributions and redemption of stock and provides that the redemption shall be treated as an exchange only if it falls within one or more of the categories listed in sub-section (b), which includes:

- (1) Redemptions not equivalent to dividends.
- (2) Substantially disproportionate redemption of stock.
- (3) Termination of a shareholder's interest.

By the express terms of 12 USCA Sec. 1134(d)(a)(3), any redemption of Class "C" stock would be proportionate and would not terminate a shareholder's interest.

Would a redemption of Class "C" stock be essentially equivalent to a dividend and thus fall outside the pale of Sec. 301? The cases hold that a redemption of stock is equivalent

• a dividend when the practical result of the transaction is to distribute accumulated earnings essentially pro rata among the shareholders while leaving the ownership of the corporation basically the same and when the distribution is not connected with a partial liquidation of the assets of the corporation? See *Keefe v. Cote* (1st Cir. 1954) 213 F. 2d 651 at 656. A redemption of Class "C" stock would be pro rata and would leave the ownership of the Bank for Cooperatives unchanged—each borrower would continue to have one vote only. A partial liquidation occurs under Sec. 346, IRC only when there is a genuine business contraction.

Under 12 USCA Sec. 1134d(a)(3), Class "C" stock would be redeemed out of earnings and would not be the result of a business contraction. From the foregoing, it is manifest that any redemption of Class "C" stock would be essentially equivalent to a dividend and should be treated as ordinary income to the recipient. This tends to show the non-capital nature of Class "C" stock. If Class "C" stock is redeemed, the Bank for Cooperatives must have sufficient earnings to enable it to distribute profits, which then can be called a redemption of Class "C" stock.

*Purchase of Class "C" Stock is Deductible as an Ordinary Loss:* Even if a court rejected the foregoing arguments and denied a deduction for the required purchase of Class "C" stock as an interest expense under Sec. 163 IRC, nevertheless the required purchase of Class "C" stock is deductible as a loss under Sec. 165 IRC.

In order to make the purchase of Class "C" stock deductible as an ordinary loss, it is necessary to establish two points: (1) that any loss realized is an ordinary loss rather than a capital loss, and (2) that the amount of the loss is equal to the purchase price. In effect, we have shown that Class "C" stock has no market price or value when purchased.

*Any Loss on the Purchase of Class "C" Stock is Ordinary Loss:* There is no doubt about the fact that any loss suffered on the purchase of Class "C" stock will be an ordinary loss rather than a capital loss. This is for the reason that such stock is purchased by reason of business necessity rather than for investment. There are a number of cases to support this position, and this point is conceded by IRS. See, for example, *Tulane Hardwood Lumber Company*, 24 TC 1146; *Western*



*Wine and Liquor Company*, 18 TC 1090; *McMillan Mortgage Company*, 36 TC 924; *Weather-Seal, Inc.*, TC Memo 1963-102; *Smith & Weldon Incorporated v. U.S.*, 164 Supp. 605.

*Worthlessness of Class "C" Stock*: This has been demonstrated in our submission concerning the patronage dividend in Class "C" stock.

*Value must be determined at time of issuance*: One further point and this is critical. Worthlessness of Class "C" stock must be determined by its value *at time of issuance*—not nine or ten years later with the benefit of hindsight. Thus, worthlessness of Class "C" stock at time of its issuance in 1956 cannot be measured by any value it might have in 1966 by reason of anticipation of its redemption in a few more years. This is fully discussed in our original submission.

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SATTERFIELD, SHELL, WILLIAMS AND BUFORD

*Attorneys at Law*

*552 First National Bank Building*

*Jackson, Mississippi 39205*

*November 1, 1965*

INTERNAL REVENUE SERVICE

*Jackson, Mississippi*

Attention: Mr. John J. Koch

GENTLEMEN: In connection with the examination of the returns of Mississippi Chemical Corporation and Coastal Chemical Corporation, we are writing to call your attention to the status of Class "C" Stock in the New Orleans Bank for Cooperatives.

The Farm Credit Act of 1955 revised the capital structure of the 12 Banks for Cooperatives and the Central Bank for Cooperatives by providing for three classes of stock. See 12 USCA Sec. 1134d. Class "A" stock is government capital and is held by the Governor of the Farm Credit Administration on behalf of the United States. Class "A" stock was issued in exchange for stock held in the Banks for Cooperatives by the Governor, on the effective date of the Farm Credit Act of 1955.

Class "B" stock is investment stock and provision is made for the payment of dividends not to exceed 4 per cent per annum. It is non-voting stock and it is owned principally by cooperative associations.

Class "C" stock is issued to farmer-cooperatives which borrow from the Banks for Cooperatives. A farmer-cooperative acquires Class "C" stock in two ways in doing business with a Bank for Cooperatives:

- (1) As a patronage dividend. 12 USCA Sec. 1134e(b).
- (2) Required purchase as a condition to a loan. 12 USCA Sec. 1134d(a)(3).

So long as a Bank for Cooperatives has Class "A" stock outstanding, all earnings (after the payment of a franchise tax, setting aside of required reserves and dividends on Class "B" stock) must be allocated to patron-cooperatives as patronage dividends in the form of Class "C" stock. 12 USCA Sec. 1134e(a). When all government capital (Class "A" stock) in a Bank for Cooperatives has been retired, it loses its exemption from income taxes. See 12 USCA Sec. 1138c.

In 1964 Congress passed P.L. 88-528 which amended the law pertaining to patronage dividends of Banks for Cooperatives to provide that, for any fiscal year that a Bank for Cooperatives is subject to Federal income taxes, it shall pay in money rather than Class "C" stock such portion of its taxable income as is necessary to permit it to issue qualified written notices of allocation for the balance. See 12 USCA Sec. 1134e(b).

The Farm Credit Act of 1955 also requires a borrower from a Bank for Cooperatives to invest quarterly in Class "C" stock in an amount equal to not less than 10 per cent nor more than 25 per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the NOBC has provided 15 per cent. Payments for such "C" stock are made quarterly or when the regular interest payments of the borrower are made. See 12 USCA Sec. 1134d(a)(3).

The Internal Revenue Service issued technical information release No. 69 on February 14, 1958, in which it announced that it would conform with the principles enunciated by court decisions in connection with the tax treatment of allocations of patronage dividends by cooperative associations to its patrons. The cases referred to were the *Long Poultry Farms* case (249 F. 2d 726) decided in 1957 and the *Carpenter* case (219 F. 2d 635) decided in 1955. These cases had held that a patron was required to report non-cash patronage dividends received from cooperative associations as income only to the extent that such non-cash patronage refunds had fair market value. Where such

patronage refunds had no fair market value, the patron was not required to include them in his gross income in the year the notice of the non-cash refund was received.

Regulation Sec. 1.61-5 implementing TIR No. 69 became effective December 3, 1959. It provides that non-cash patronage refunds are includable in the gross income of patrons to the extent of the fair market value of the document notifying the patron of the amount of the allocation made to him at the time of its receipt by the patron. *Any document which is payable only at the discretion of the cooperative association or which is otherwise subject to the conditions beyond the control of the patron shall be considered not to have any fair market value at the time of its receipt by the patron, unless it is clearly established to the contrary.*

The following are characteristics of Class "C" stock, which are defined in 7 USCA Sec. 1134d: (sic)

**Right to dividends:** The law prohibits the payment of dividends on Class "C" stock.

**Voting rights:** In effect, Class "C" stock is nonvoting. Each holder of one or more shares of Class "C" stock which is eligible to borrow from a Bank for Cooperatives is entitled to one vote, provided, however, that any holder which within the period of 2 years next preceding the cut-off date for voting has not been a borrower from a Bank in which it holds Class "C" stock shall not be entitled to a vote. From this it is clear that it is not the ownership of Class "C" stock which gives a right to vote, but the borrowing from a Bank for Cooperatives. Regardless of how many shares of Class "C" stock a cooperative owns, it still has only one vote.

**Possibility of appreciation in value:** There is no possibility of any appreciation in value of Class "C" stock since at most it would be worth par at such times as it might be redeemed.

**Delivery of stock certificates:** No stock certificates have been delivered by the NOBC to MCC or Coastal to evidence ownership of Class "C" stock.

**Transferability:** Class "C" stock is not transferable, except under very limited conditions. The only known instances of transfers of Class "C" stock in NOBC have been pursuant to a dissolution or merger and then the stock has been transferred at no value.

**Market value:** There is no market value for Class "C" stock since it has not been sold nor can it be sold for all practical

purposes. Certainly so long as the holder is indebted to the issuing bank, "C" stock would not be marketable because it is impressed with a lien in favor of the Bank. 12 USCA Sec. 1134d(c). The lack of market value will be discussed in more detail later.

*Collateral value:* Obviously, "C" stock would have no value as collateral with any lender other than the issuer because of the foregoing characteristics. It is important to note, however, that it has no value as collateral even with the issuing Bank. In fact, we have been informed by officials of Banks for Cooperatives that in evaluating the financial position of an applicant for a loan, any value assigned to Class "C" stock by the applicant is disregarded and is not considered an asset.

Class "C" stock is issued as a patronage dividend. Under Reg. Sec. 1.61-5 non-cash dividends received from a cooperative are includable only to the extent of fair market value, and this is presumed to be lacking where redemption rests in the discretion of a board of directors. We believe that it is not open to serious question that Class "C" stock received as a patronage dividend should not be taken into income because of its lack of fair market value.

What will happen when all government capital has been retired? It is my understanding that the Banks for Cooperatives at Berkeley and Houston recently completed the retirement of all government capital and thus will be in a position to begin retirement of Class "C" stock. The NOBC expects to have the last of its government capital retired during the next two or three years. Here is what the law says on retirement of Class "C" stock: "After retirement of all Class "A" stock, Class "C" stock also may be retired at par by calling the oldest outstanding Class "C" stock, but Class "C" stock that was issued for a fiscal year period shall not be called for retirement until all Class "B" stock that was issued during or prior to that fiscal year has been called for retirement." 12 USCA Sec. 1134d(a)(3).

Under 12 USCA Sec. 1134d(a)(3), Class "C" stock would be redeemed out of earnings and would not be the result of a business contraction. If Class "C" stock is redeemed, the Bank for Cooperatives must have sufficient earnings to enable it to distribute profits, which then can be called a redemption of Class "C" stock.

Whether or not there is a redemption of Class "C" stock and to what extent depends upon the following factors:

(1) Future earnings of the Bank. Past or accumulated earnings will not provide funds to retire such stock.

(2) The state of the law relating to Banks for Cooperatives at the time. If, for example, the law were amended to require the payment of all current earnings in cash, no Class "C" stock could be retired.

(3) The discretion of the Board of Directors.

As to the worthlessness of Class "C" stock, we submit the following:

1. Class "C" stock has no market value. It has no market value because no market is maintained in it, and because the owner is virtually prohibited from disposing of it, as was discussed earlier. As mentioned above, the only known instances of transfer of such stock have been at *no value*. Regulations Sec. 1.61-5 which govern the receipt of Class "C" stock as patronage dividends provide that any document which is payable only at the discretion of the issuer, or which is otherwise subject to conditions beyond the control of the patron, shall be considered not to have any fair market value at the time of its receipt by the patron. The law provides that "C" stock is redeemable only at the discretion of the Board of Directors of the Bank for Cooperatives, and redemption is contingent on future earnings of the issuer and on the state of the law at the time. Moreover, there is a special situation in the case of Banks for Cooperatives regarding control of the patrons. The greatest number of directors which patrons of a Bank for Cooperatives can elect is two out of a total of seven. See 12 USCA Sec. 1134, Sec. 640b and 640d. Thus, the patrons of a bank for cooperatives have very little control over its Board of Directors. In the case of most cooperatives, the patrons elect the entire Board of Directors. Thus, we believe we can show conclusively by the government's own regulations that Class "C" stock has no market value.

2. The law prohibits the payment of dividends on Class "C" stock. The most it could ever be worth is its issue price many years later, and this is contingent on factors over which the holder has virtually no control. No voting rights attach to the issuance of additional Class "C" stock. These factors all point to worthlessness.



3. It has no value as collateral for loans. As mentioned above, even the issuing Bank disregards any value assigned to it on the balance sheet of a borrower in analyzing the financial position of the borrower.

We understand from the NOBC that when the government "A" stock is paid up, the outstanding "C" stock is expected to be put on a 13-year or 14-year revolving fund basis.

*Value must be determined at time of issuance:* One further point and this is critical. Worthlessness of Class "C" stock must be determined by its value *at time of issuance*—not nine or ten years later with the benefit of hindsight.

Thus, worthlessness of Class "C" stock at the time of its issuance cannot be measured by any value it might have in 1965 by reason of anticipation of its redemption in a few more years.

Yours very truly,

JOHN C. SATTERFIELD,  
General Counsel  
Mississippi Chemical Corporation  
Coastal Chemical Corporation

JCS:md:rf

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NEW ORLEANS BANK FOR COOPERATIVES

P.O. Box 50072, New Orleans, Louisiana 70150

March 22, 1966

MR. JOHN C. SATTERFIELD, General Counsel

Mississippi Chemical Corporation

P.O. Box 388

Yazoo City, Mississippi 39194

DEAR JOHN: Yesterday in our conversation over the telephone you requested that I write you with reference to the policy of the bank in regard to the retirement of class A (U.S. Government) stock in the bank. In reviewing our files I find that Mr. Nettles in his letter to you of December 22, 1965, covered this subject very thoroughly and pointed out that the retirement of this stock prior to June 30, 1968, was very doubtful.

Subsequent to Mr. Nettles' letter, the staff of the bank again reviewed this subject; and a memorandum covering it was presented to our board at its meeting held on February 25, 1966. A copy of this memorandum is attached. You will observe

that it was recommended that the prepayment of the class A stock through the sale of debentures be deferred until such time as the officers of the bank determine that it will be advantageous to the bank and its borrowers for the board to reconsider this subject. It was also recommended that the program of retiring class A stock adopted on May 20, 1959, be continued. The goals under this program are set out on the first page of the memorandum.

As we now stand the class A stock will be retired annually in the amounts required by law, and under our calculations it will take six or seven years more to retire all of the stock. Should the cost of money decline, it is altogether possible that the board will again consider retiring any outstanding A stock through the sale of debentures.

As requested, I am attaching a schedule of the C stock in the bank issued by years.

Sincerely yours,

/s/ D. R. Stump  
D. R. STUMP  
*Vice President.*

DRS:cml  
Enclosures

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**POLICY OF NEW ORLEANS BANK FOR COOPERATIVES ON RETIREMENT OF GOVERNMENT CAPITAL**

It is deemed advisable at this time for the board to reconsider and restate the bank's policy regarding the retirement of class A stock in the bank. At the meeting of the board held on May 20, 1959, a program of retiring class A stock over a period of 20 years with full retirement on June 30, 1976, was approved. The goal and actual retirement of stock under this program is presented below.

Fiscal Year Ended June 30	Goal		Actual		Ahead of Schedule
	Retirement	Balance	Retirement	Balance	
Original A Stock		\$7, 000, 000		\$7, 000, 000	
1956 (6 months)	\$71, 900	6, 928, 100	\$71, 900	6, 928, 100	
1957	181, 300	6, 746, 800	181, 300	6, 746, 800	
1958	229, 800	6, 517, 000	229, 800	6, 517, 000	
1959	247, 000	6, 270, 000	247, 000	6, 270, 000	
1960	270, 000	6, 000, 000	300, 000	5, 970, 000	
1961	275, 000	5, 725, 000	350, 000	5, 620, 000	
1962	275, 000	5, 450, 000	350, 000	5, 270, 000	
1963	300, 000	5, 150, 000	390, 000	4, 880, 000	
1964	300, 000	4, 850, 000	450, 000	4, 430, 000	
1965	325, 000	4, 525, 000	660, 000	3, 770, 000	\$755, 000
1966	350, 000	4, 175, 000			
1967	375, 000	3, 800, 000			
1968	400, 000	3, 400, 000			
1969	400, 000	3, 000, 000			
1970	400, 000	2, 600, 000			
1971	400, 000	2, 200, 000			
1972	400, 000	1, 800, 000			
1973	400, 000	1, 400, 000			
1974	400, 000	1, 000, 000			
1975	400, 000	600, 000			
1976 (20 years)	600, 000				

This schedule of class A stock retirement was approved by the board as a general objective with the understanding that, under very high interest rate conditions or in the event of substantial losses on loans, deviations from the schedule would be necessary.

At its meeting held on January 23, 1964, the board was informed that, with the approval of the Governor of the Farm Credit Administration and the Federal Farm Credit Board, the class A stock might be retired ahead of the above mentioned schedule with funds obtained through the sale of debentures. The officers of the bank at that time felt that the prepayment of class A stock would be advantageous to the bank and its borrowers, and the board unanimously approved such retirement as of June 30, 1966. The Federal Farm Credit Board at its February 5, 1964, meeting approved and authorized retirement of

the class A stock of the bank outstanding as of June 30, 1966, or at the close of any subsequent fiscal year. *Upon such retirement the bank was authorized to call and retire the class B stock then outstanding and the oldest class C stock with the provision that the maximum amount of class C stock retired shall not exceed the net cash available from earnings and sale of class C stock for any year less patronage dividends and dividends on capital stock paid in cash.*

Although not specifically stated in the minutes of the meeting of the board at which the prepayment of class A stock through the sale of debentures was approved, it was understood by the board and the bank's officers that a substantial increase in interest rates on debentures would make the prepayment of a large amount of class A stock uneconomical and, in such event, the prepayment should be deferred.

Because of our relations with the Central Bank for Cooperatives through participations, it is not practicable to retire the class A stock in this bank until similar stock in the Central Bank has been retired, which under the present program of the Central Bank will be on June 30, 1968.

Subsequently several of the bank's larger borrowers suggested that consideration be given to a plan under which more of the bank's net earnings could be distributed in cash after the class A stock has been retired. These borrowers expressed interest in a more flexible policy under which a district bank for cooperatives could develop a patronage dividend program designed to fit the needs of its borrowers. It was the judgment of this group that the bank should be on a current cash refund basis and the revolving of class C stock should be minimized and that each borrower be required to invest in class C stock in an amount sufficient to capitalize its loans. This program of permanent capital and larger cash refunds, referred to generally as the cash payment plan, has been approved by over 90 per cent of the bank's stockholders but is not considered favorably by most of the other district banks.

A special committee appointed by the board to study the capital program for the bank reported to the board at its meeting held on November 17, 1965, and recommended that, when permitted by law, borrowers be given a choice between two programs; namely, the cash plan with a type of permanent capital and cash rebates and the revolving plan as now provided

by law. This committee also recommended that legislation necessary to implement this program be sought. After fully considering the recommendations of this committee, the board unanimously approved the same.

From the foregoing it appears that the program for the retirement of class A stock as set out in the schedule attached to the minutes of May 20, 1959, meeting of the board was amended by the action of the board on January 23, 1964, which authorized the prepayment of class A stock on June 30, 1966, with funds obtained through the sale of debentures. The officers of the bank are of the opinion that such prepayment should be deferred for the following reasons:

1. The interest rates on debentures has decreased and the gross interest spread on loans has declined to the extent that retirement through the sale of debentures is not now economically advantageous.
2. It will facilitate operations of the bank to defer retirement of class A stock to such a time as the class A stock of the Central Bank for Cooperatives is retired and the Central Bank begins revolving its C stock or rebating its earnings in cash.
3. The stockholders of the bank have expressed their desire for a cash payment plan, which, if adopted and implemented, would probably affect the decision to repay class A stock.

In view of the foregoing, it is recommended:

1. That the prepayment of class A stock through the sale of debentures be deferred until such time as the officers of the bank determine that it will be advantageous to the bank and its borrowers for the board to reconsider this subject.
2. That, until otherwise determined by the board, the program of class A stock retirement adopted on May 20, 1959, be continued.

(Handwritten notation on bottom of above document: This policy approved by Board of Directors at meeting held on Feb. 25, 1966, and memo made a part of the minutes. /s/DRS)



## New Orleans Bank for Cooperatives

Year	C Stock Issued by Year
1956	\$86,589.66
1957	201,274.79
1958	249,660.36
1959	343,929.40
1960	409,598.35
1961	438,209.60
1962	429,003.95
1963	523,191.86
1964	613,410.35
1965	883,505.43
Total	\$4,178,463.75

## NEW ORLEANS BANK FOR COOPERATIVES

P.O. Box 50072, New Orleans, Louisiana 70150

December 22, 1965

Mr. JOHN C. SATTERFIELD

General Counsel

Mississippi Chemical Corporation

Post Office Box 388

Yazoo City, Mississippi 39194

DEAR MR. SATTERFIELD:

Subject: Mississippi Chemical Corporation

Coastal Chemical Corporation

This refers to your letter of December 7 addressed to Mr. Stump, and also your letter of December 13 addressed to me, pertaining to the Internal Revenue Service examination of the subject associations. You have raised certain questions in each letter. We will discuss the questions in your letter of December 7 first.

As to the agent's first reference "... the bank in its notification of patronage refunds to its shareholders, it is recommended that the amount be reflected at face value and a credit to operating income ..." and also his statement that other cooperatives give full value to the C stock, resulting in tax paid under prior and present law, our recommendation to the cooperative to reflect the stock at face value and credit operating income appears on our annual notice of allocation. A specimen copy is enclosed herewith as Exhibit A for your review.

The purpose of this statement incorporated in our notice is purely from a financial accounting standpoint. We recom-

mended that borrowing cooperatives reflect the face value of our stock on their accounting records simply to show equity as to ownership in the bank. This statement has no significance whatsoever from a tax standpoint as to the value of the stock and was not intended for an opinion as to the value of the stock. In any event the cooperative is free to set up a valuation reserve against this stock upon advice of its attorney and tax accountants. In general, our borrowing cooperatives record C stock (both purchased and received as patronage refunds) at face value. We do know specifically of one other cooperative in this district, other than yourselves, which writes the stock off for tax purposes and, according to information given us, there are cooperatives in other districts which do likewise. Some are purely exempt, i.e., Sec. 521 cooperatives, and the remainder are corporations operating on a cooperative basis. In either case, if the cooperative sets the stock up at face value, the corresponding income would normally be credited to pool earnings but also deducted by the cooperative as a patronage refund except for the nonmember portion; in the case of nonexempt cooperatives. As a result, the cooperative (whether exempt or non-exempt) pays no tax as such on the stock, with the exception noted, but the reporting falls to the patron on a single tax level.

As you know, prior to the adoption of the Revenue Act of 1962, members of cooperatives were not required to report paper patronage refunds at face value but only to the extent of the fair market value of the paper. Until the U.S. Government capital is retired in full, the bank for cooperatives is not subject to the Revenue Act of 1962, and the consent provisions therein, since we are not subject to the payment of income tax until the class A stock is retired. Patronage refunds paid by the bank prior to becoming taxable would apparently come under Regulation 1.61.5 which provides that noncash refunds are includable in the income of patrons to the extent of their fair market value, since the borrower has not consented to report patronage refunds at face value.

With respect to the agent's statement that the stock is utilized in the full amount, in the event of default or foreclosure, just the same as any other collateral having face value, we submit for your review a copy of our letter dated November 17, 1965 to revenue agent John Koch in response to his letter requesting advice as to the collateral value assigned to C stock.

and the bank procedure in the event of default. You will note that our regulations require the offset of stock in the event of default and/or foreclosure only under certain conditions. These are set out in that letter. Generally speaking, the stock is applied only in event of an anticipated loss and only to the extent of the anticipated loss. Any stock in excess of the anticipated loss would be left for normal revolving. The bank could refrain from offsetting the stock against the loan account and wait until the stock is revolved and then apply the proceeds as a reduction of the loss in the year of revolving. This would be more cumbersome accounting and the mere offsetting of the stock against the loan does not in itself give any value to the stock.

With regard to your letter of December 13, your first request is for information pertaining to official action taken by the board of directors and the bank with regard to payment of C stock after all the A stock has been retired. The bank is not permitted to revolve any class C stock, of course, until all class A (U.S. Government) is retired. With respect to this, we enclose a certified copy of an excerpt from the board minutes of May 20, 1959, along with the proposed schedule of class A stock retirements. You will notice that at this meeting, the district board, at the request of the bank's president, approved a goal for final retirement of class A stock as of June 30, 1976, or over a period of 20 years from June 30, 1956. This policy was reaffirmed during the intervening years from 1959 up until January 1964, at which time the board approved the recommendation of bank officials to prepay the Government capital by issuance of consolidated debentures, but not earlier than June 30, 1966. We enclose a certified copy of an excerpt from these minutes for your review. Following that meeting, the Federal Farm Credit board approved the bank's request to retire all class A stock outstanding as early as June 30, 1966 by issuance of debentures. However, this approval provided that the maximum amount of class C stock to be revolved in any fiscal year is limited to the net cash available from earnings and sale of class C stock for that year. A copy of a letter from the Farm Credit Administration evidencing this approval is enclosed. Subsequent to that time, however, it was brought to our attention that the Central Bank would not retire its class A stock any earlier than June 30, 1968. Because of the fact that revolving all C stock of the district bank in cash is generally contingent on the re-

volving of the Central Bank, and because of the recent rise in interest costs and reduction of interest spread, and because most of our cooperatives prefer a cash rebate plan of operations and permanent capital, the banks' executive committee's feeling at this time is that it will not recommend the prepayment of class A stock any earlier than June 30, 1968, or possibly later.

As an observation, I might point out to you that since our official plan was a 20-year plan up until 1964, it would appear that this factor would be of primary significance in determining valuations of Mississippi Chemical Corporation and Coastal Chemical Corporation owned class C stock of the bank acquired prior to 1964.

You have requested information pertaining to any action that the directors of the bank have taken concerning C stock involved in a situation where a cooperative is going out of business or there is a foreclosure of a loan by NOBC. The procedures for retirement under a foreclosure have been discussed previously in this letter.

As to retirements for a cooperative going out of business, the manual permits the bank in the case of liquidation or dissolution of any present or former borrower to retire and cancel the association's stock at the fair book value thereof, not exceeding par, under certain conditions as follows:

1. The retirement of such stock would not unduly affect the financial position of the bank.
2. There is reasonable assurance that the business of the borrower has not been continued under circumstances in which it would be proper and feasible for the successor to acquire and hold the interest of its predecessors in the bank.

However, any such retirements are subject to certain limitations and authorizations. The manual states that the board may give blanket approval for the bank's executive committee to retire up to \$5,000 of C stock without consulting the board as to each such request. Any retirements from \$5,000 to \$25,000 can be made only by prior approval of the board of directors. If the retirement exceeds \$25,000 it has to be approved by the Farm Credit Administration.

Regarding these manual provisions our board, in its meeting of November 15, 1961, approved a policy that it would reserve the right to review each individual case before approval of re-

tirement of stock or any other equities of such borrower rather than give the executive committee blanket approval to retire any amount up to \$5,000. A certified copy of these minutes is attached for your information.

The executive committee as a matter of policy has never recommended to the board to retire any C stock out of order for a liquidating co-op on the basis that this would establish a dangerous precedent and could result in inequities.

We trust this covers all of your questions in each letter, and if we can be of further assistance, let us know.

Very truly yours,

/s/ N. F. Pendleton  
N. F. PENDLETON  
*President*

NFP:fm

NEW ORLEANS BANK FOR COOPERATIVES  
P.O. Box 50072, New Orleans, Louisiana 70150

July 16, 1965

GENTLEMEN:

Subject: Notification of patronage refund for fiscal year June 30, 1965, payable in Class C stock.

For the year ended June 30, 1965, the bank's earnings, after provision for franchise tax, dividends on Class B stock, and transfers to allocated surplus, amounted to \$480,742.77. In accordance with our bylaws, these earnings are to be distributed in Class C stock to borrowing associations in proportion to the total gross interest earnings. Since our gross interest for this period amounted to \$2,677,084.49, this patronage refund amounts to 17.9577 per cent of the gross interest.

We accordingly wish to officially notify you that your class C stock patronage refund for the year ended June 30, 1965, amounts to \$ , and has been set up on the records of the bank. It is our recommendation that this amount be reflected in your records by a debit to investments in C stock in the bank and a credit to your operating income at face value.

For your general information, we present below a statement of your cooperative's investment in the capital accounts of this bank as of the close of business June 30, 1965, after giving effect to the above class C stock patronage refund:



	Balance at June 30, 1964	Changes During Year	Balance at June 30, 1965
Class B stock.....	\$	\$	\$
Class C stock:			
Qualifying share.....	\$	\$	\$
From quarterly investment by co- operative associations (15% of interest).....	\$	\$	\$
From earnings distributed as a patronage refund in C stock.....	\$	\$	\$
Total C stock.....	\$	\$	\$

Your very truly,

/s/ J. C. BURAS  
J. C. Buras  
Assistant Treasurer

Exhibit A

NOVEMBER 17, 1965

Mr. JOHN J. KOCH  
Internal Revenue Agent  
U.S. Treasury Department  
P.O. Box 1659  
Meridian, Mississippi

DEAR MR. KOCH:

Subject: Mississippi Chemical Corporation, Coastal Chemical Corporation, Yazoo City, Mississippi

Reference is made to your letter of November 9 to the bank concerning examination of the income tax returns of the subject cooperatives.

You have inquired whether or not the bank assigns any collateral value to borrower-owned class C stock. The policy of this bank is to assign no value for collateral purposes to class C stock owned by a borrower in determining the loan-base of the applicant.

In the event of default and/or foreclosure of a loan, the bank is authorized under Section 153 of the Bank for Cooperatives' manual to apply the fair value (not exceeding face) of class C

stock owned by the defaulting borrower only under certain conditions, as follows:

1. The borrower has been declared bankrupt;
2. The borrower has had a substantial part of its property placed in the hands of a receiver;
3. The borrower has ceased operation, or
4. The indebtedness of the borrower is considered uncollectible in the judgment of the bank.

If we can be of further assistance on this, please advise.

Very truly yours,

D. M. NETTLES  
Vice President and Treasurer

DMN:fm

cc: Mr. John C. Satterfield  
General Counsel  
Mississippi Chemical Corporation

U.S. TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
Office of the District Director  
P.O. Box 1659, Meridian, Mississippi  
November 9, 1965

Mr. NEAL F. PENDLETON, *President*  
*The New Orleans Bank for Cooperatives*  
P.O. Box 50072  
New Orleans, Louisiana 70150

In Re: Mississippi Chemical Corporation, Coastal Chemical Corporation, Yazoo City, Mississippi

DEAR MR. PENDLETON: In connection with the examination of the Federal income tax returns of the above-named taxpayers the following information is requested:

In granting the approval of the amount loanable, is any value assigned to the "C" stock owned by the borrower. In other words, let us assume that the facilities, forming the basis of appraisal and loan are not sufficient in value to cover the normal value required by your Bank, is the class "C" stock considered in the approval of the amount loanable.

It is assumed, that in the case of default and foreclosure, the face amount of the "C" stock is utilized and applied against the indebtedness.

The information requested is under authority of Section 7602 of the Internal Revenue Code of 1954. Your reply at an early date would be highly appreciated.

Yours truly

/s/ J. J. Koch  
JOHN J. KOCH  
*Internal Revenue Agent*

EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD  
OF DIRECTORS OF THE NEW ORLEANS BANK FOR COOPERATIVES  
HELD MAY 20, 1959

In discussing interest rates, Mr. Chavanne mentioned the desirability of having some goal for the rate of class A stock retirement. Each director was handed copy of a schedule (Exhibit 2) showing a proposed program for retirement of class A stock over a period of 20 years. After discussion, motion was made, seconded, and unanimously carried approving this schedule for class A stock retirement as a general objective with the understanding that, under very high interest rate conditions or in the event of some substantial loss on bad loans, the bank would find it necessary to deviate from the schedule rate of retirement.

I hereby certify that the above is a true and exact excerpt from the minutes of the regular meeting of the Board of Directors of the New Orleans Bank for Cooperatives held on May 20, 1959.

Dated this 3rd day of December, 1965.

/s/ C. D. POWELL  
*Assistant Secretary*

*N.O.B.C. Program of Class A Stock Retirement*

Year Ended	Actual	Goal	
		Retire	Balance
Original A Stock			\$7, 000, 000
6-30-56	\$71, 900	\$71, 900	6, 928, 100
6-30-57	181, 300	181, 300	6, 746, 800
6-30-58	229, 800	229, 800	6, 517, 000
6-30-59		247, 000	6, 270, 000
6-30-60		270, 000	6, 000, 000
6-30-61		275, 000	5, 725, 000
6-30-62		275, 000	5, 450, 000
6-30-63		300, 000	5, 150, 000
6-30-64		300, 000	4, 850, 000
6-30-65		325, 000	4, 525, 000
6-30-66		350, 000	4, 175, 000
6-30-67		375, 000	3, 800, 000
6-30-68		400, 000	3, 400, 000
6-30-69		400, 000	3, 000, 000
6-30-70		400, 000	2, 600, 000
6-30-71		400, 000	2, 200, 000
6-30-72		400, 000	1, 800, 000
6-30-73		400, 000	1, 400, 000
6-30-74		400, 000	1, 000, 000
6-30-75		400, 000	600, 000
6-30-76 (20 years)		600, 000	

**EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD  
OF DIRECTORS OF THE NEW ORLEANS BANK FOR COOPERATIVES  
HELD JANUARY 23, 1964**

Retirement of Government owned class A stock outstanding at June 30, 1966, by issue of consolidated debentures was next discussed. Schedules covering the subject were handed to each director. Mr. Pendleton mentioned that this topic was covered at length by the Springfield Bank for Cooperatives at the Presidents' conference in Houston, Texas; and, as the Governor of the Farm Credit Administration approved Springfield's request, it was the feeling of the executive committee that the bank should submit a similar recommendation to FCA. The president then explained in detail what effects cashing out the Government owned stock by going into debt would have on the capital structure of the bank and also the entire cooperative bank system. He pointed out that at September 30, 1963, the bank's ratio

of net worth to debentures was .9 to 1 and under the law the ratio could be as high as 8 to 1. It is quite obvious that the bank has more capital than it really needs. If the present program of retiring Government capital is continued, the bank will have by 1973 approximately \$13,000,000.00 of capital, considerably more than the most optimistic projection of loan volume shows will be needed. With regard to the system as a whole, he noted that retirement under this plan in 1966 would reduce the maximum size loan that the system could make to a borrower. Mr. Nettles next presented the effect the proposed retirement would have on the bank's earnings. He noted that it would affect income and earnings to the extent of the interest cost on approximately \$3,500,000.00, the interest earned on Treasury bonds held by the bank would also be taxable; and the bank would be subject to franchise taxes in the three states. Projections indicated that under the proposed plan net earnings would be reduced by approximately \$100,000.00 annually.

At the conclusion of Mr. Nettles' remarks, Mr. Pendleton stated that the executive committee had considered the various aspects of the subject and unanimously recommends that the board approve the retirement of class A stock outstanding at June 30, 1966, by issuance of debentures, subject to the approval of the Farm Credit Administration. After further discussion, motion was made, seconded, and unanimously carried approving the executive committee's recommendation.

I hereby certify that the above is a true and exact excerpt from the minutes of the regular meeting of the Board of Directors of the New Orleans Bank for Cooperatives held on January 23, 1964.

Dated this 21st day of December, 1965.

/s/ C. D. POWELL  
Assistant Secretary

FARM CREDIT ADMINISTRATION

Washington, D.C., 20578

February 7, 1964

Mr. NEAL F. PENDLETON, President  
New Orleans Bank for Cooperatives  
P.O. Box 50072  
New Orleans, Louisiana 70150



DEAR MR. PENDLETON: This will confirm our telephone conversation on February 6 in which we advised you that the Federal Farm Credit Board had approved the request of the New Orleans Bank for Cooperatives for permission to accelerate the retirement of class A (Government) stock in the bank.

The resolution adopted by the Federal Board was as follows:

"RESOLVED that an exception be made to the policy previously adopted by this Board on retirement of class A (Government) capital stock in the banks for cooperatives to provide that the Springfield Bank for Cooperatives and the New Orleans Bank for Cooperatives, with the approval of their respective boards of directors and the Farm Credit Administration, may:

(1) Accelerate the retirement of class A (Government) stock in the bank;

(2) Retire, as of June 30, 1966, or at the close of any subsequent fiscal year, any amount of class A (Government) and class B stock then outstanding; and

(3) Upon retirement of all class A (Government) and class B stock each of the banks may call and retire the oldest outstanding class C stock, in full or on a pro-rata basis, in accordance with the provisions of the Farm Credit Act of 1933, as amended by the Farm Credit Act of 1955, but the maximum amount of class C stock retired as of the close of any fiscal year shall not exceed the net cash available for such retirement from earnings and sale of class C stock for the year."

You will observe that the maximum amount of class C stock to be retired in any fiscal year is limited to the net cash available from earnings and sale of class C stock for the year. Therefore, the sources of funds for such retirement would be substantially as follows:

1. Net earnings.

2. Required investment in class C stock paid in cash less the amount of class C stock of the Central Bank purchased on account of participations held by the Central Bank.

3. Cash received from Central Bank in redemption of equities.

Less:

1. Allocations of Central Bank taken into earnings.

2. Cash distribution of current earnings—required by law—

20 percent of the allocated surplus and patronage refunds.

3. Income taxes and dividends paid on capital stock, if any.

We hope that the accelerated retirement of the stock as proposed, which will enable the bank to begin paying 20 percent of its current refunds in cash and revolving borrowers' equities in cash, will aid the bank in obtaining additional business which it might not otherwise get.

Very truly yours,

GLENN E. HEITZ,

*Director of Cooperative Bank Service.*

**EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD  
OF DIRECTORS OF THE NEW ORLEANS BANK FOR COOPERATIVES  
HELD NOVEMBER 15, 1961**

The board fully discussed regulations issued by the Farm Credit Administration pertaining to the cancellation and retirement of stock and other equities of a borrower in liquidation or dissolution. The consensus was that for the time being the board would prefer to review each individual case before approving the retirement of stock and other equities of any such borrower.

I hereby certify that the above is a true and exact excerpt from the minutes of the regular meeting of the Board of Directors of the New Orleans Bank for Cooperatives held on November 15, 1961.

Dated this 21st day of December, 1965.

/s/ C. D. POWELL  
*Assistant Secretary*

ATTACHMENT TO AND MADE A PART OF CLAIM: (Form 843)

Filed by: Mississippi Chemical Corporation, P.O. Box 388, Yazoo City, Mississippi

For the fiscal year ended June 30, 1962

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

(c) *Interest*

\$16,421.75

The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100. par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to 15 per cent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the above amount.

Cost incurred in purchasing class C stock are not deductible. See Rev. Rul. 65-241.

(d) *Patronage Dividend on "C" stock*

\$27,489.40

The taxpayer received class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The amount was not included in income as having no value.

The Bank, in its notification of patronage refund to its shareholders, recommends that the amount be reflected at face value and a credit to operating income.

The "C" stock is assigned as collateral against loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount,—the same as any other collateral having face value.

The amount above, is therefore includable in income under section 61 of the 1954 Code.

The income tax related to (c) above amounted to \$8,539.31 and was paid as shown by attached copy of letter accompanying the remittance.

The income tax related to (d), amounting to \$14,259.48, was agreed to in Form 870 which was sent to Mr. Julian W. Johnson, Appellate Conferee, Internal Revenue Service, U.S. Treasury Department, 711-2121 Building, 2121-8th Avenue, North, Birmingham, Alabama 35203. The above amount of income tax was paid July 21, 1967 as part of a check for \$17,954.84, which included applicable interest.

It was understood with Mr. Johnson that the execution and filing of the foregoing Form 870 would not preclude the filing of a Claim (Form 843). In fact it was understood that a claim would be filed as a basis of litigation in the applicable U.S. District Court.

The total income tax represented by (c) and (d) above amounts to \$22,798.79 shown as (g) on Form 843.

It is claimant's position that the interest represented by (d) was deductible and further that the class C stock referred to was not worth \$100.00 per share during the fiscal year ended June 30, 1962.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1961 and 1963.

ATTACHMENT TO AND MADE A PART OF CLAIM: (FORM 843)

Filed by: Mississippi Chemical Corporation, P. O. Box 388,  
Yazoo City, Mississippi

For the fiscal year ended June 30, 1963

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

(d) *Interest*

\$18,863.35

The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100. par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to 15 per cent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the above amount.

Cost incurred in purchasing class C stock is not deductible. See Rev. Rul. 65-241.

(e) *Patronage Dividend on "C" stock*

\$25,152.83

The taxpayer received class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The amount was not included in income as having no value.

The Bank, in its notification of patronage refund to its shareholders, recommends that the amount be

reflected at face value and a credit to operating income.

The "C" stock is assigned as collateral against loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount, — the same as any other collateral having face value.

The amount above, is therefore includable in income under section 61 of the 1954 Code.

The income tax related to (d) above amounted to \$9,808.93 and was paid as shown by attached copy of letter accompanying the remittance.

The income tax related to (e), amounting to \$11,304.94, was agreed to in Form 870 which was sent to Mr. Julian W. Johnson, Appellate Conferee, Internal Revenue Service, U.S. Treasury Department, 711-2121 Building, 2121-8th Avenue, North, Birmingham, Alabama 35203. The above amount of income tax was paid July 21, 1967 as part of a check for \$13,478.19, which included applicable interest.

It was understood with Mr. Johnson that the execution and filing of the foregoing Form 870 would not preclude the filing of a Claim (Form 843). In fact it was understood that a claim would be filed as a basis of litigation in the applicable U.S. District Court.

The total income tax represented by (d) and (e) above amounts to \$21,113.87 shown as (g) on Form 843.

It is claimant's position that the interest represented by (d) was deductible and further that the class C stock referred to was not worth \$100.00 per share during the fiscal year ended June 30, 1963.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi, should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1961 and 1962.



In the United States District Court for the Southern Judicial  
District of Mississippi, Western Division

Civil Action No. 1214

COASTAL CHEMICAL CORPORATION, PLAINTIFF  
vs.

THE UNITED STATES OF AMERICA, DEFENDANT

### COMPLAINT

(Filed Dec. 15, 1967)

#### COUNT I

COMES Coastal Chemical Corporation, a corporation organized under the laws of the State of Mississippi, and files this suit against The United States of America and for cause of action says:

##### I.

Plaintiff is a corporation organized under the laws of the State of Mississippi with its domicile and principal place of business in Yazoo City, Mississippi, in the Southern District of Mississippi, Western Division, of the United States District Court.

##### II.

Defendant is The United States of America upon whom service of process may be had by service of summons upon the United States District Attorney of Jackson, Mississippi, and by sending a copy of the summons and complaint to the Attorney General of the United States at Washington, D.C.

##### III.

This is an action of a civil nature for the recovery of United States income taxes and interest paid thereon, which income taxes and interest were erroneously or illegally assessed and wrongfully collected.

##### IV.

Plaintiff is organized under the General Corporate Laws of the State of Mississippi but is a cooperative qualified to receive financing under the Statutes of the United States of America as a cooperative. It is and since the beginning of its

operation has been engaged in manufacturing fertilizer and distributing same primarily to its stockholder patrons.

### V.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1961, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$40,779.88 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d (a) (3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$40,779.88 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d (a) (3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1961, the sum of \$51,689.59 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 1134l(b) of Title 12, United States Code.

### VI.

The said Revenue Agent's report reduced plaintiff's net operating loss deduction by disallowing as deductions amounts paid to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code (as described in paragraph V(a) above), and by including in plaintiff's income the face amount of Class C stock received as patronage dividends from the New Orleans Bank for Cooperatives (as described in paragraph V(b) above), for the following fiscal years in the amounts stated, to-wit:

(a) Fiscal year ended June 30, 1958:

(1) Disallowed deduction of \$11,670.19 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(b) Fiscal year ended June 30, 1959:

(1) Disallowed deduction of \$33,474.20 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134(a)(3) of Title 12, USC.

(2) Included as income \$14,345.04 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(c) Fiscal year ended June 30, 1960:

(1) Disallowed deduction of \$46,172.23 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$47,361.32 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

That as a result of the above described adjustments, plaintiff's net operating loss carry forward was reduced and plaintiff for fiscal year ending June 30, 1961, paid additional income taxes of \$231.00 plus applicable interest of \$63.34.

Plaintiff alleges that its net operating loss deduction should not be reduced as set forth in said Revenue Agent's report and that plaintiff's net operating loss deduction and carry forward for fiscal years ended June 30, 1957, June 30, 1958, June 30, 1959, June 30, 1960, and June 30, 1961, should be computed in accordance with Exhibit A which is attached hereto and made a part hereof as if copied herein and that said net operating loss deduction carried forward should be \$827,744.28 as of June 30, 1960, and should be \$244,681.92 as of June 30, 1961.

## VII.

The Farm Credit Act of 1955 (Section 1134(d)(a)(3) title 12, USC) requires a borrower from a Bank for Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a payment of fifteen per cent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1961, plaintiff paid the New Orleans Bank for Cooperatives \$40,779.88 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was

required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d(a)(3) of Title 12, United States Code. Plaintiff show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1961, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said bank for said payment had no market value for the reasons hereinafter set forth.

### VIII.

Section 1134l(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1961, plaintiff borrowed money from the New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as patronage dividends in the stated amount of \$51,689.59. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$51,689.59 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30 1961.

### IX.

(a) That the amounts paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal years ending June 30, 1958, through June 30, 1961, inclusive, as hereinabove set forth, for the privilege of borrowing from said Bank are proper deductible expenses either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold

or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends for the fiscal years ending June 30, 1958 through June 30, 1961, inclusive, as hereinabove set forth, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

#### X.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1961, and the adjustments to plaintiff's net operating loss carry forward, plaintiff paid additional income taxes of \$231.00 plus applicable interest of \$63.34 thereon for its fiscal year ending June 30, 1961. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$231.00 was erroneous, and the aforesaid reduction of plaintiff's net operating loss for the fiscal years ending June 30, 1958 through June 30, 1961, inclusive, was erroneous.

#### XI.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1961, said Claim being for a refund of income taxes erroneously assessed and paid in the amount of \$231.00 plus applicable interest of \$63.34, and said Claim requested a computation of plaintiff's net operating loss for fiscal years ending June 30, 1958, June 30, 1959, June 30, 1960, and June 30, 1961, in accordance with Exhibit A attached hereto and made a part hereof. Said Claim for Refund (including all Exhibits attached thereto) is attached hereto as Exhibit B and made a part hereof as if copied herein.



## XII.

That by Certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending June 30, 1961 had been denied. There is attached hereto as Exhibit C letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1961.

WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$231.00 and applicable interest paid of \$63.34 and interest thereon as allowed by law; and plaintiff prays that its net operating loss deduction be computed and allowed for fiscal years ending June 30, 1958 through June 30, 1961, inclusive, in accordance with Exhibit A attached hereto; and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

## COUNT II

## I.

Plaintiff re-alleges and re-avers each and every allegation of paragraphs I through IV of Count I above.

## II.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1962, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$34,116.16 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$34,116.16 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1962, the sum of

\$60,541.52 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 1134 l(b) of Title 12, United States Code.

### III.

The said Revenue Agent's report reduced plaintiff's net operating loss deduction by disallowing as deductions amounts paid to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code (as described in paragraph II(a) above), and by including in plaintiff's income the face amount of Class C stock received as patronage dividends from the New Orleans Bank for Cooperatives (as described in paragraph II(b) above), for the following fiscal years in the amounts stated, to-wit:

(a) Fiscal year ended June 30, 1958:

(1) Disallowed deduction of \$11,670.19 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(b) Fiscal year ended June 30, 1959:

(1) Disallowed deduction of \$33,474.20 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$14,345.04 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(c) Fiscal year ended June 30, 1960:

(1) Disallowed deduction of \$46,172.23 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$47,361.32 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(d) Fiscal year ended June 30, 1961:

(1) Disallowed deduction of \$40,779.88 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$51,689.59 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

That as a result of the above described adjustments, plaintiff's net operating loss carry forward to fiscal year ended June 30, 1962, was reduced. Plaintiff alleges that its net operating loss deduction should not be reduced as set forth in said Revenue Agent's report and that plaintiff's net operating loss deduction and carry forward for fiscal years ended June 30, 1957, June 30, 1958, June 30, 1959, June 30, 1960, and June 30, 1961, should be computed in accordance with Exhibit A which is attached hereto and made a part hereof as if copied herein and that said net operating loss deduction carried forward should be \$244,681.92 as of June 30, 1961.

#### IV.

The Farm Credit Act of 1955 (Section 1134d(a)(3) of Title 12, USC) requires a borrower from a Bank of Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent, nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a payment of fifteen per cent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1962, plaintiff paid the New Orleans Bank for Cooperatives \$34,116.16 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d(a)(3) of Title 12, United States Code. Plaintiff would show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1962, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said Bank for said payment had no market value for the reasons hereinafter set forth.

## V.

Section 1134 1(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1962, plaintiff borrowed money from the New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as patronage dividends in the stated amount of \$60,541.52. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$60,541.52 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30, 1962.

## VI.

(a) That the amounts paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal years ending June 30, 1958 through June 30, 1962, inclusive, as hereinabove set forth, for the privilege of borrowing from said Bank are proper deductible expenses either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends for the fiscal years ending June 30, 1958 through June 30, 1962, inclusive, as hereinabove set forth, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that



no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

## VII.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1962, and the adjustments to plaintiff's net operating loss carry forward, plaintiff paid additional income taxes of \$174,478.04 plus applicable interest of \$39,605.60 thereon for its fiscal year ending June 30, 1962. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$174,478.04 was erroneous, and the aforesaid reduction of plaintiff's net operating loss for the fiscal years ending June 30, 1958 through June 30, 1962, inclusive, was erroneous. There is attached hereto as Exhibit D a computation of the taxes for which refund is claimed.

## VIII.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1962, said Claim being for a refund of income taxes erroneously assessed and paid in the amount of \$174,478.04 plus applicable interest of \$39,605.60, and said Claim requested a computation of plaintiff's net operating loss for fiscal years ending June 30, 1958, June 30, 1959, June 30, 1960, June 30, 1961, and June 30, 1962, in accordance with Exhibit A attached hereto and made a part hereof. Said Claim for Refund for fiscal year ending June 30, 1962 (including all Exhibits attached thereto), is attached hereto as Exhibit E and made a part hereof as if copied herein.

## IX.

That by Certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending June 30, 1962, had been denied. There is attached hereto as Exhibit F letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1962.



WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$174,478.04 and applicable interest paid of \$39,605.60 and interest thereon as allowed by law; and plaintiff prays that its net operating loss deduction be computed and allowed for fiscal years ending June 30, 1958 through June 30, 1962, inclusive, in accordance with Exhibit A attached hereto; and for costs of this action, and for such other and further relief as to the Court may seem just and proper.

### COUNT III

#### I.

Plaintiff re-alleges and re-avers each and every allegation of paragraphs I through IV of Count I above.

#### II.

(a) Plaintiff duly filed its Federal income tax return for its fiscal year ending June 30, 1963, on or before the due date thereof with the District Director of Internal Revenue at Jackson, Mississippi. On said tax return, plaintiff deducted from its gross income the amount of \$41,207.02 which plaintiff had been required to pay during such fiscal year to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code. On or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to plaintiff and in said report the Revenue Agent erroneously disallowed the deduction of \$41,207.02 which plaintiff had been required to pay to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code.

(b) In said Revenue Agent's report (dated January 10, 1966), the Revenue Agent erroneously included in plaintiff's income for the fiscal year ended June 30, 1963, the sum of \$52,305.05 as the alleged value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends in accordance with Section 1134l(b) of Title 12, United States Code.

#### III.

The said Revenue Agent's report reduced plaintiff's net operating loss deduction by disallowing as deductions amounts

paid to the New Orleans Bank for Cooperatives under the provisions of Section 1134d(a)(3) of Title 12, United States Code (as described in paragraph II(a) above), and by including in plaintiff's income the face amount of Class C stock received as patronage dividends from the New Orleans Bank for Cooperatives (as described in paragraph II(b) above) for the following fiscal years in the amounts stated, to-wit:

(a) Fiscal year ended June 30, 1958:

(1) Disallowed deduction of \$11,670.19 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(b) Fiscal year ended June 30, 1959:

(1) Disallowed deduction of \$33,474.20 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$14,345.04 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(c) Fiscal year ended June 30, 1960:

(1) Disallowed deduction of \$46,172.23 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3), of Title 12, USC.

(2) Included as income \$47,361.32 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(d) Fiscal year ended June 30, 1961:

(1) Disallowed deduction of \$40,779.88 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$51,689.59 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

(e) Fiscal year ended June 30, 1962:

(1) Disallowed deduction of \$34,116.16 in connection with payment of interest to New Orleans Bank for Cooperatives under Section 1134d(a)(3) of Title 12, USC.

(2) Included as income \$60,541.52 received as patronage dividend in Class C stock of the New Orleans Bank for Cooperatives.

That as a result of the above described adjustments, plaintiff's net operating loss carry forward to fiscal year ended June 30, 1963, was reduced. Plaintiff alleges that its net operating loss deduction should not be reduced as set forth in said Revenue Agent's report and that plaintiff's net operating loss deduction and carry forward for fiscal years ended June 30, 1957, June 30, 1958, June 30, 1959, June 30, 1960, June 30, 1961, and June 30, 1962, should be computed in accordance with Exhibit A which is attached hereto and made a part hereof as if copied herein and utilized as set forth in Exhibits D and G attached hereto.

#### IV.

The Farm Credit Act of 1955 (Section 1134d(a)(3) of Title 12, USC) requires a borrower from a Bank for Cooperatives to purchase quarterly Class C stock of such Bank in an amount equal to not less than ten per cent nor more than twenty-five per cent of the amount of interest payable by it to the Bank during such calendar quarter. The Board of Directors of the New Orleans Bank for Cooperatives has provided for a payment of fifteen per cent of the amount of interest payable to said Bank by organizations borrowing from it. During the fiscal year ended June 30, 1963, plaintiff paid the New Orleans Bank for Cooperatives \$41,207.02 for such Class C stock and plaintiff deducted said amount from its gross income. Plaintiff was required to pay said amount to the New Orleans Bank for Cooperatives in connection with interest payments under the provisions of Section 1134d(a)(3) of Title 12, United States Code. Plaintiff would show that said payments were properly deductible from its gross income for fiscal year ended June 30, 1963, either as additional interest paid to said New Orleans Bank for Cooperatives, or as ordinary and necessary business expense, or as a loss on a transaction entered into for profit, and that the Class C stock received by the plaintiff from said Bank for said payment had no market value for the reasons hereinafter set forth.

#### V.

Section 1134l(b) of Title 12, United States Code, provides for the issuance by a Bank for Cooperatives of patronage refunds to organizations borrowing from such Bank. During fiscal year ending June 30, 1963, plaintiff borrowed money from the

New Orleans Bank for Cooperatives and plaintiff received Class C stock from the New Orleans Bank for Cooperatives as patronage dividends in the stated amount of \$52,305.05. The Class C stock received by plaintiff from said Bank as patronage refunds has no market value (as hereinafter set forth) and the taxpayer included same in its income tax return for said fiscal year at \$1.00 per share for identification purposes only. Plaintiff would show that said \$52,305.05 received as Class C stock of said Bank should not be included in its taxable income for fiscal year ended June 30, 1963.

## VI.

(a) That the amounts paid by plaintiff to the New Orleans Bank for Cooperatives for the fiscal years ending June 30, 1958 through June 30, 1963, inclusive, as hereinabove set forth, for the privilege of borrowing from said Bank are proper deductible expenses either as additional interest paid, or as an ordinary and necessary business expense, or as a loss on a transaction entered into for profit; that at the time of such purchase, the Class C stock of the New Orleans Bank for Cooperatives was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

(b) That the Class C stock received by plaintiff from the New Orleans Bank for Cooperatives as patronage dividends for the fiscal years ending June 30, 1958 through June 30, 1963, inclusive, as hereinabove set forth, should not be included in plaintiff's income since such Class C stock had no market value; that at the time of such purchase, the Class C stock was not actually corporate stock at all and was entirely worthless; that no certificates of any nature were issued therefor; that no dividends were or could be payable thereon; that no voting rights were incident thereto; that there was no possibility of appreciation in value; that such Class C stock could not be sold or transferred and the issuer thereof refused to consider it as collateral for loans; and that as a result said so-called Class C stock had no fair market value.

## VII.

As a result of the herein described adjustments to plaintiff's taxable income for fiscal year ending June 30, 1963, and the adjustments to plaintiff's net operating loss carry forward, plaintiff paid additional income taxes of \$41,422.10 plus applicable interest of \$7,718.62 thereon for its fiscal year ending June 30, 1963. The aforesaid determination by defendant of a deficiency in plaintiff's income tax of \$41,422.10 was erroneous, and the aforesaid reduction of plaintiff's net operating loss for the fiscal years ending June 30, 1958 through June 30, 1963, inclusive, was erroneous. There is attached hereto as Exhibit G a computation of the taxes for which refund is claimed.

## VIII.

On or about October 12, 1967, plaintiff filed its Claim for Refund for fiscal year ending June 30, 1963, said Claim being for a refund of income taxes erroneously assessed and paid in the amount of \$41,422.10 plus applicable interest of \$7,718.62, and said Claim requested a computation of plaintiff's net operating loss for fiscal years ending June 30, 1958, June 30, 1959, June 30, 1960, June 30, 1961, June 30, 1962, and June 30, 1963, in accordance with Exhibit A attached hereto and made a part hereof. Said Claim for Refund for fiscal year ending June 30, 1963 (including all Exhibits attached thereto), is attached hereto as Exhibit H and made a part hereof as if copied herein.

## IX.

That by Certified letter dated December 13, 1967, plaintiff was notified that its Claim for Refund for fiscal year ending June 30, 1963, had been denied. There is attached hereto as Exhibit I letter from the District Director of Internal Revenue, Jackson, Mississippi, denying plaintiff's said Claim for Refund for fiscal year ending June 30, 1963.

WHEREFORE, plaintiff prays judgment against the defendant in the amount of \$41,522.10 and applicable interest paid of \$7,718.62 and interest thereon as allowed by law; and plaintiff prays that its net operating loss deduction be computed and allowed for fiscal years ending June 30, 1958 through June 30, 1963, inclusive, in accordance with Exhibit A attached hereto, and as herein set forth, and for costs of this action, and for



such other and further relief as to the Court may seem just and proper.

/s/ John C. Satterfield

JOHN C. SATTERFIELD

Attorney for Coastal Chemical Corporation

P.O. Box 466, Masonic Building

Yazoo City, Mississippi

Of Counsel:

J. DUDLEY BUFORD,

Satterfield, Shell, Williams and Buford

P.O. Box 1172

Jackson, Mississippi

HOLLAMAN M. RANEY

P.O. Box 388

Yazoo City, Mississippi

ATTACHMENT TO AND MADE A PART OF CLAIM (Form 843)

Submitted by: Coastal Chemical Corporation, Box 388, Yazoo City, Mississippi

For fiscal year ended June 30, 1961

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

(a) Interest \$40,779.88

The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100 par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to .15 percent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the amount shown above.

Cost incurred in purchasing class C stock is not deductible. See Rev. Rul. 65-241.

(b) Patronage Dividend on "C" stock \$51,689.59

The taxpayer received Class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The dividend was not included in income—as having no value.

The New Orleans Bank, in its notification of patronage refund to its shareholders, recommends that the amount be reflected at face value and a credit to operating income.

The "C" stock is assigned as collateral against outstanding loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount—the same as any other collateral having face value. The dividend above, is therefore includable in income under section 61 of the 1954 Code.

As the result of the Agent's adjustments an income tax of \$231.00 was paid on April 7, 1966 together with \$63.34 interest; this was included in a check for \$83,211.24 which included the payment of other items related to the next fiscal year ended June 30, 1962. The small amount of income tax for the fiscal year ended June 30, 1961 is due to the application of a net operating loss deduction, all as set out in the Agent's report referred to above.

It is claimant's position that the interest represented by (a) was deductible and further that the Class C stock referred to in (b) was not worth \$100.00 per share during the fiscal year ended June 30, 1961. It is also claimant's position that the net operating loss deduction allowed by the Revenue Agent in his report and calculations for the fiscal year ended June 30, 1961 should be increased to allow for claimant's position with respect to "Interest" and "Patronage Dividends" for prior fiscal years as follows as shown by the Agent's report:

Fiscal year ended June 30, 1960: (Schedule 4)

(b) <i>Interest</i>	\$46,172.23
(c) <i>Patronage Dividend</i>	47,361.32

Fiscal year ended June 30, 1959: (Schedule 3)

(e) <i>Interest</i>	\$33,474.20
(f) <i>Patronage Dividend</i>	14,345.04

Fiscal year ended June 30, 1958: (Schedule 2)

(d) <i>Interest</i>	\$11,670.19
---------------------	-------------

On the basis of the foregoing there would be no income tax payable for the fiscal year ended June 30, 1961, and this claim

is simply for the amount paid, namely \$231.00. See attached copy of Exhibit A which is a part of Claim for the fiscal year ended June 30, 1962; it shows the computations indicating no taxable income for the fiscal year ended June 30, 1961.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event, John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi, should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1962 and 1963.

**ATTACHMENT TO AND MADE A PART OF CLAIM (Form 843)**

Submitted by: Coastal Chemical Corporation, Box 388, Yazoo City, Mississippi

For fiscal year ended June 30, 1962.

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

**(b) Interest**

**\$34,116.16**

The above adjustment is the same as for prior years\* and represents the costs of acquiring additional "C" stock in the New Orleans Bank for Cooperatives and which was claimed as an interest deduction.

\*The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100 par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to 15 percent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the amount shown above.

Cost incurred in purchasing class C stock is not deductible. See Rev. Rul. 65-241.

**(c) Patronage Dividend "C" Stock**

**\$60,541.52**

The above adjustment is also the same as for prior years\* and is the class C stock received from

the New Orleans Cooperative Bank during the year, as a patronage dividend.

\*The taxpayer received class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The dividend was not included in income—as having no value.

The New Orleans Bank, in its notification of patronage refund to its shareholders, recommends that the amount be reflected at face value and a credit to operating income.

The "C" stock is assigned as collateral against outstanding loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount—the same as any other collateral having face value. The dividend above, is therefore includable in income under section 61 of the 1954 Code.

It is claimant's position that the interest represented by (b) was deductible and further that the Class C stock referred to in (c) was not worth \$100.00 per share during the fiscal year ended June 30, 1962. In line with the foregoing, claimant takes the position that the net operating loss deduction eliminated by the Revenue Agent in his report should be recomputed as shown by the attached Exhibit A, which gives effect to the position of claimant with respect to "Interest" and "Patronage Dividends" in prior years, and thus restores a net operating loss deduction to the extent shown in Exhibit A. The recomputed Net Operating Loss Deduction is simply the amount claimed by taxpayer in the fiscal years ended June 30, 1962 and June 30, 1963, adjusted for all changes made by Revenue Agent other than those called "Interest" and "Patronage Dividends". The carry-over loss originally claimed by taxpayer for the fiscal year ended June 30, 1963 is eliminated entirely.

In Exhibit B the net income basic to this claim is computed, along with the related income tax, income taxes paid, and the resulting amount of this claim.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event, John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi, should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1961 and 1963.

ATTACHMENT TO AND MADE A PART OF CLAIM (Form 843)  
Submitted by: Coastal Chemical Corporation, Box 388, Yazoo  
City, Mississippi

For Fiscal Year ended June 30, 1963

In Revenue Agent's report dated January 10, 1966, submitted to the above named taxpayer under date of March 14, 1966, said report covering the period set out above, exceptions were taken as follows:

(b) *Interest \$41,207.02*

The above adjustment is the same as for prior years\* and represents the cost of acquiring additional "C" stock in the New Orleans Bank for Cooperatives and which was claimed as an interest deduction.

\*The taxpayer acquired one share of class C stock in the New Orleans Bank for Cooperatives (\$100. par value) in order to obtain loans from the Bank. Each borrower must also purchase additional "C" stock in an amount equal to 15 percent of interest paid on its loan. The taxpayer claimed the cost of acquiring the additional "C" stock as interest in the amount shown above.

Cost incurred in purchasing class C stock is not deductible. See Rev. Rul. 65-241.

(c) *Patronage Dividend "C" Stock \$52,305.05*

The above adjustment is also the same as for prior years\* and is the class C stock received from the New Orleans Cooperative Bank during the year.

\*The taxpayer received class C stock from the New Orleans Cooperative Bank as patronage dividends in the amount stated above. The dividend was not included in income—as having no value. The New Orleans Bank, in its notification of patronage refund to its shareholders, recommends that the amount be reflected at face value and a credit to operating income. The "C" stock is assigned as collateral against outstanding loans, and in the event of default and/or foreclosure of a loan, the stock is utilized in the face amount—the same as any other collateral having face value. The dividend above, is, therefore includable in income under section 81 of the 1954 Code.

It is claimant's position that the interest represented by (b) was deductible and further that the Class C Stock referred



to in (c) was not worth \$100.00 per share during the fiscal year ended June 30, 1963.

On the basis of claimant's position, the corrected taxable income is shown by Exhibit A, which also shows the corrected income tax, income taxes paid and amount of refund.

An expeditious handling of this claim is requested; a conference with claimant's attorney is requested, and will be arranged for promptly on request, in which event, John C. Satterfield, Attorney-at-Law, Box 466, Yazoo City, Mississippi, should be accordingly notified.

Similar claims are being filed by claimant for the fiscal years 1961 and 1962.

Exhibit A.

*Taxable Income, Related Income Taxes, Income Taxes Paid and Refund Claimed, Coastal Chemical Corporation, Yazoo City, Mississippi, for the fiscal year ended June 30, 1963*

	Income per sch. 11 of revenue agent's report	As determined by appellate	Changes per this claim	Net income as basis of this claim
Taxable income per original return.....	\$250, 493. 81	\$250, 493. 81		\$250, 493. 81
Changes by Revenue Agent:				
(a) Cost of Sales— decrease..	\$14, 522. 94	\$14, 522. 94		\$14, 522. 94
(b) Interest.....	41, 207. 02	41, 207. 02	(\$41, 207. 02)	
(c) Patronage Dividend..	52, 305. 05	52, 305. 05	(52, 305. 05)	
(d) Patronage refund deduction..	209, 223. 44	139, 482. 29		139, 482. 29
(e) Net operat- ing loss deduction..	22, 777. 21	22, 777. 21		22, 777. 21
	\$340, 035. 66	\$270, 294. 51		\$176, 782. 44
	\$590, 529. 47	\$520, 788. 32		\$427, 276. 25

## Exhibit A—Continued

*Taxable Income, Related Income Taxes, Income Taxes Paid and Refund Claimed, Coastal Chemical Corporation, Yazoo City, Mississippi, for the fiscal year ended June 30, 1963—Continued*

	Income per sch. 11 of revenue agent's report	As determined by appellate	Changes per this claim	Net income as basis of this claim
(f) Deprecia- tion.....	\$2,687.90	\$2,687.90		\$2,687.90
Unused				
Contribu- tions car- ried over from f.y. 6-30-61.....			3,193.68	3,193.68
	\$2,687.90	\$2,687.90		\$5,881.58
Corrected tax- able income.....	\$587,841.57	\$518,100.42		\$421,394.67
Tax on \$421,394.67:				
Taxable Income.....			\$421,394.67	
Less: Long term capital gain.....			172,584.17	
			\$248,810.50	
Tax on \$248,810.50.....				\$123,881.46
25% of tax on \$172,584.17.....				43,146.04
Total Tax.....				\$167,027.50
Less: Investment Credit—				
Per Schedule.....				24,546.48
Balance.....				\$142,481.02
Taxes paid:				
With return.....			\$63,722.34	
April 4, 1966.....			*12,750.94	
April 7, 1966.....			*21,105.48	
July 18, 1967.....			86,324.36	183,903.12
Refund claimed.....				(\$41,422.10)

\*Per copies of letters attached.

**Coastal Chemical Corporation—Schedule 14—Y/E 6/30/63—Computation of  
Investment Credit**

	Cost	Ratable share	Qualified portion	Qualified investment
<b>Qualified Property:</b>				
<b>NEW—</b>				
4 to 6 years.....	\$94,966.54	6.291	5,974.35	1,991.45
6-8.....	7,538.68	6.291	474.26	316.18
8 or more.....	5,488,073.22	6.291	345,254.69	345,254.69
				347,562.32
<b>USED—</b>				
8 or more				
98.609 X 50,000..	\$49,304.50	6.291	3,161.75	3,101.75
				\$350,664.07
Investment Credit 7%.....				24,546.48
<b>Taxable income—</b>				
amended.....			421,394.67	6.291%
<b>Patronage re-</b>				
<b>fund—</b>				
amended.....			6,277,028.10	
			6,698,422.77	

**COASTAL CHEMICAL CORPORATION**

Post Office Box 388  
Yazoo City, Mississippi 39194

April 4, 1966

Mr. J. G. MARTIN, Jr.  
District Director  
Internal Revenue Service  
U.S. Treasury Department  
301 North Lamar Street  
Jackson, Mississippi 39202

Re: Your File For, L-191B-430:VBH:mnmm, Coastal Chemical Corporation, Yazoo City, Mississippi

DEAR SIR: We have received copy of an examination report explaining proposed adjustments in the tax liability of Coastal

Chemical Corporation, letter of transmittal being dated March 14, 1966. This includes page 5 showing "Computation of Income Tax for Partial Agreement" which has been computed in accordance with Form 870 executed by Coastal Chemical Corporation on December 14, 1965, showing the amount of tax for the fiscal years detailed below, on which we have calculated the interest as follows:

Additional tax and interest on "agreed" items:

Fiscal year 6/30/62:	
Tax .....	\$21,219.85
Interest .....	4,496.24
Fiscal year 6/30/63:	
Tax .....	12,750.94
Interest .....	1,936.75
Total .....	\$40,403.58

We therefore enclose herein check of Coastal Chemical Corporation in the sum of \$40,403.58 covering the principal and interest on the deficiencies thus agreed.

Yours very truly,

COASTAL CHEMICAL CORPORATION  
By JOHN C. SATTERFIELD  
General Counsel

EXHIBIT I

U.S. TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
District Director, 301 North Lamar Street  
Jackson, Mississippi 39202

Certified Mail

In reply refer to  
COASTAL CHEMICAL CORPORATION  
Box 388  
Yazoo City, Mississippi

In Re: Claim for refund of \$41,422.10 for the period June 30, 1963

GENTLEMEN: In accordance with the provisions of existing internal revenue laws, this notice of disallowance in full of your claim or claims is hereby given.

No suit or proceeding in any court for the recovery of any internal revenue tax, penalty, or other sum which is a part of the claim for which this notice of disallowance is issued, may be begun after the expiration of two years from the date of mailing of this letter.

Very truly yours,

DISTRICT DIRECTOR

In the United States District Court for the Southern District  
of Mississippi, Western Division

Civil Action No. 1214

COASTAL CHEMICAL CORPORATION, APPELLEE

v.

UNITED STATES OF AMERICA, APPELLANT

### ANSWER

Comes now the defendant, the United States of America, by its attorney, Robert E. Hauberg, United States Attorney for the Southern District of Mississippi, and for its answer to the plaintiff's complaint herein, admits, denies and alleges as follows:

#### COUNT I

For answer to Count I of the complaint, the defendant says:

##### I.

Admits the allegations contained in paragraph I.

##### II.

Denies the allegations contained in paragraph II for the reason that the complaint attacks the validity of a determination of an officer of the United States, and thus, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, a copy of the summons and of the complaint must be sent by registered or certified mail to such officer.

##### III.

Admits the allegations contained in paragraph III, except denies that the income taxes and interest sought to be recov-



ered by the plaintiff were erroneously or illegally assessed and wrongfully collected.

#### IV.

Denies the allegations contained in paragraph IV for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof, except admits that plaintiff is organized under the general corporate laws of the State of Mississippi.

#### V.

(a) With respect to the allegations contained in subparagraph (a) of paragraph V, the defendant answers as follows:

Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

(b) Denies the allegations contained in subparagraph (b) of paragraph V, except admits that in said Revenue Agent's report (dated January 10, 1966), the Revenue Agent included in the plaintiff's income for the fiscal year ended June 30, 1961, the sum of \$51,689.59 as the value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by the plaintiff from the New Orleans Bank for Cooperatives as patronage dividends.

#### VI.

With respect to the allegations contained in paragraph VI, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the Revenue Agent's report and the statute referred to therein speak for themselves.

Denies the allegations contained in the second sentence for the reason that the adjustments referred to therein speak for themselves and for the further reason that the defendant is presently without information or knowledge sufficient to form

a belief as to the truth of the allegation that the income taxes and interest referred to therein have been paid.

Denies the allegations contained in the third sentence.

## VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information and knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

## VIII.

With respect to the allegations contained in paragraph VIII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentences.

## IX.

Denies the allegations contained in paragraph IX.

## X.

With respect to the allegations contained in paragraph X, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

## XI.

With respect to the allegations contained in paragraph XI, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the claim for refund referred to therein speaks for itself, except admits that on October 16, 1967, the plaintiff filed a claim for refund of income taxes in the amount of \$231, plus applicable interest; allegedly paid on April 7, 1966, for its fiscal year ended June 30, 1961.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

## XII.

Admits the allegations contained in paragraph XII.

## COUNT II

For answer to Count II of the complaint, the defendant says:

### I.

The defendant's answer to paragraph I of Count II is the same as its answers to paragraphs I through IV of Count I.

### II.

(a) With respect to the allegations contained in subparagraph (a) of paragraph II, the defendant answers as follows:

Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

### III.

With respect to the allegations contained in paragraph III, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the Revenue Agent's report and the statute referred to therein speak for themselves.

Denies the allegations contained in the second sentence for the reason that the adjustments referred to therein speak for themselves.

Denies the allegations contained in the third sentence.

#### IV.

With respect to the allegations contained in paragraph IV, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

#### V.

With respect to the allegations contained in paragraph V, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentences.

#### VI.

Denies the allegations contained in paragraph VI.

#### VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

Admits the allegations contained in the third sentence, except denies that the plaintiff is entitled to the refund claimed.

#### VIII.

With respect to the allegations contained in paragraph VIII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the claim for refund referred to therein speaks for itself, except admits that on October 16, 1967, the plaintiff filed a claim for refund of income taxes in the amount of \$174,478.04, plus applicable interest, allegedly paid on April 4, 1966, April 7, 1966, and July 18, 1966, for its fiscal year ended June 30, 1962.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

### IX.

Admits the allegations contained in paragraph IX.

### COUNT III

For answer to Count III of the complaint, the defendant says:

#### I.

The defendant's answer to paragraph I of Count III is the same as its answers to paragraphs I through IV of Count I.

#### II.

(a) With respect to the allegations contained in subparagraph (a) of paragraph II, the defendant answers as follows:  
Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

(b) Denies the allegations contained in subparagraph (b) of paragraph II, except admits that in said Revenue Agent's report (dated January 10, 1966), the Revenue Agent included in the plaintiff's income for the fiscal year ended June 30, 1963, the sum of \$52,305.05 as the value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by the plaintiff from the New Orleans Bank for Cooperatives as patronage dividends.



## III.

With respect to the allegations contained in paragraph III, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the Revenue Agent's report and the statute referred to therein speak for themselves.

Denies the allegations contained in the second sentence for the reason that the adjustments referred to therein speak for themselves.

Denies the allegations contained in the third sentence.

## IV.

With respect to the allegations contained in paragraph IV, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

## V.

With respect to the allegations contained in paragraph V, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentences.

## VI.

Denies the allegations contained in paragraph VI.

## VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

Admits the allegations contained in the third sentence, except denies that the plaintiff is entitled to the refund claimed.

### VIII.

With respect to the allegation contained in paragraph VIII, the defendant answers as follows:

Denies the allegations contained in the first sentence, except admits that on October 16, 1967, the plaintiff filed a claim for refund of income taxes in the amount of \$41,422.10, plus applicable interest, allegedly paid on September 10, 1963 (with return), April 4, 1966, April 7, 1966, and July 18, 1967, for its fiscal year ended June 30, 1963.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

### IX.

Admits the allegations contained in paragraph IX.

WHEREFORE, the defendant prays for judgment in its favor, for dismissal of the complaint with prejudice, for costs and such other and further relief as this Court may deem just and proper.

/s/ ROBERT E. HAUBERG  
United States Attorney

In the United States District Court for the Southern District  
of Mississippi, Western Division  
Civil Action No. 1213

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

ANSWER

(Filed Feb. 19 1968).

Comes now the defendant, the United States of America, by its attorney, Robert E. Hauberg, United States Attorney for

the Southern District of Mississippi, and for its answer to the plaintiff's complaint herein, admits, denies and alleges as follows:

### COUNT I.

For answer to Count I of the complaint, the defendant says:

#### I.

Admits the allegations contained in paragraph I.

#### II.

Denies the allegations contained in paragraph II for the reason that the complaint attacks the validity of a determination of an officer of the United States and, thus, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, a copy of the summons and of the complaint must be sent by registered or certified mail to such officer.

#### III.

Admits the allegations contained in paragraph III, except denies that the income taxes and interest sought to be recovered by the plaintiff were erroneously or illegally assessed and wrongfully collected.

#### IV.

Denies the allegations contained in paragraph IV for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof, except admits that plaintiff is organized under the general corporate laws of the State of Mississippi.

#### V.

(a) With respect to the allegations contained in subparagraph (a) of paragraph V, the defendant answers as follows:

Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

#### VI.

With respect to the allegations contained in paragraph VI, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information and knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

#### VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentences.

#### VIII.

Denies the allegations contained in paragraph VIII.

#### IX.

With respect to the allegations contained in paragraph IX, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

#### X.

With respect to the allegations contained in paragraph X, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the claim for refund referred to therein speaks for itself, except admits that on October 13, 1967, the plaintiff filed a claim for refund of income taxes in the amount of \$24,489.26, plus applicable interest, allegedly paid on April 4, 1966, and June 29, 1967, for its fiscal year ended June 30, 1961.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

## XI.

Admits the allegations contained in paragraph XI.

## COUNT II

For answer to Count II of the complaint, the defendant says:

### I.

The defendant's answer to paragraph I of Count II is the same as its answer to paragraphs I through IV of Count I.

### II.

(a) With respect to the allegations contained in subparagraph (a) of paragraph II, the defendant answers as follows:

Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

(b) Denies the allegations contained in subparagraph (b) of paragraph II, except admits that in said Revenue Agent's report (dated January 10, 1966), the Revenue Agent included in the plaintiff's income for the fiscal year ended June 30, 1962, the sum of \$27,489.40 as the value of Class C stock of the New Orleans Bank for Cooperatives, which Class C stock had been received by the plaintiff from the New Orleans Bank for Cooperatives as patronage dividends.



## III.

With respect to the allegations contained in paragraph III, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

## IV.

With respect to the allegations contained in paragraph IV, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentences.

## V.

Denies the allegations contained in paragraph V.

## VI.

With respect to the allegations contained in paragraph VI, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

## VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the claim for refund referred to therein speaks for itself, except admits that on October 13, 1967, the plaintiff filed a claim for refund of income taxes in the amount of

\$22,798.79, plus applicable interest, allegedly paid on April 4, 1966, and July 21, 1967, for its fiscal year ended June 30, 1962.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

### VIII.

Admits the allegations contained in paragraph VIII.

### COUNT III

For answer to Count III of the complaint, the defendant says:

#### I.

The defendant's answer to paragraph I of Count III is the same as its answers to paragraphs I through IV of Count I.

#### II.

(a) With respect to the allegations contained in subparagraph (a) of paragraph II, the defendant answers as follows:

Admits the allegations contained in the first sentence.

Denies the allegations contained in the second sentence for the reason that the income tax return and the statute referred to therein speak for themselves.

Denies the allegations contained in the third sentence, except admits that on or about March 14, 1966, an Internal Revenue Agent's report (dated January 10, 1966) was submitted to the plaintiff.

#### III.

With respect to the allegations contained in paragraph III, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the second and third sentences for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the fourth sentence for the reason that the statute referred to therein speaks for itself.

Denies the allegations contained in the fifth sentence.

## IV.

With respect to the allegations contained in paragraph IV, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the statute referred to therein speaks for itself.

Admits the allegations contained in the second sentence.

Denies the allegations contained in the third and fourth sentence.

## V.

Denies the allegations contained in paragraph V.

## VI.

With respect to the allegations contained in paragraph VI, the defendant answers as follows:

Denies the allegations contained in the first sentence for the reason that the defendant is presently without information or knowledge sufficient to form a belief as to the truth thereof.

Denies the allegations contained in the second sentence.

## VII.

With respect to the allegations contained in paragraph VII, the defendant answers as follows:

Denies the allegations contained in the first sentence, except admits that on October 13, 1967, the plaintiff filed a claim for refund of income taxes in the amount of \$21,113.87, plus applicable interest, allegedly paid on April 4, 1966, and July 21, 1967, for its fiscal year ended June 30, 1963.

Admits the allegations contained in the second sentence, except denies each and every allegation contained in the claim for refund referred to therein unless specifically admitted herein.

## VIII.

Admits the allegations contained in paragraph VIII.

WHEREFORE, the defendant prays for judgment in its favor, for dismissal of the complaint with prejudice, for costs and such other relief as this Court may deem just and proper.

/s/ ROBERT E. HAUBERG,  
United States Attorney

In the United States District Court for the Southern District  
of Mississippi, Western Division

Civil Action No. 1214

COASTAL CHEMICAL CORPORATION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

STIPULATION AS TO FACTS AND DOCUMENTS

(Filed Nov. 6, 1968)

It is hereby stipulated by the parties to this action, by and through their respective counsel, that, for purposes of this action only, the following facts are true and that the exhibits attached hereto are true copies of genuine original documents, any or all of which may be introduced as evidence at the trial hereof, subject only to pertinent objections as to competency, relevancy and materially. Each party, however, expressly reserves the right of offer at the trial such other and further evidence as is not inconsistent with the facts stipulated herein.

1. This is a civil action, instituted by the plaintiff, Coastal Chemical Corporation, against the defendant, the United States of America, for the recovery of \$263,518.70 in income taxes and interest assessed against and collected from the plaintiff by the defendant for the fiscal years ended June 30, 1961, 1962 and 1963.

2. The pleadings raising the issues to be resolved are the complaint and the answer.

3. Federal jurisdiction is invoked herein under 28 U.S.C., Section 1340 and/or 28 U.S.C., Section 1346(a)(1).

4. At all times material herein, the plaintiff

(a) was a corporation organized under the laws of Mississippi with its domicile and principal place of business in Yazoo City, Yazoo County, Mississippi.

(b) was a cooperative association as defined in the Agricultural Marketing Act, as amended;

(c) was subject to the tax imposed by 26 U.S.C., Section 11 (The plaintiff was not, at any time material herein, a farmers' cooperative organization as described in 26 U.S.C., Section 521 (b)(1).)

(d) kept its books and records on the accrual method of accounting and on a July 1 to June 30 fiscal year basis.

5. The plaintiff timely filed its federal income tax returns (Forms 1120) for the fiscal years ended June 30, 1957, 1958, 1959, 1960, 1961, 1962, and 1963, with the District Director of Internal Revenue for the State of Mississippi. True copies of those returns are attached hereto as Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, and 1-G, respectively.

7. In its federal income tax return for the fiscal year ended June 30, 1963, the plaintiff reported a tax liability (after investment credit) of \$63,722.24 which was paid prior to the filing of the return.

8. During each of the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962 and 1963, the plaintiff was a borrower from the New Orleans Bank for Cooperatives. As such borrower during each of those years, it was required under 12 U.S.C., Section 1134d(a)(3) to invest quarterly in the Class C stock of said bank an amount equal to 15 percent of the amount of interest payable by it to the bank during the calendar quarter on its loans. The 15 percent rate was authorized by 12 U.S.C., Section 1134d(a)(3) and was prescribed by the board of directors of the bank with the approval of the Farm Credit Administration. Pursuant to said investment requirement, the plaintiff purchased the Class C stock of the New Orleans Bank for Cooperatives referred to in paragraph 16 hereof. In its federal income tax returns, the plaintiff claimed \$99.00 of each \$100.00 thus invested as a deduction in each of the fiscal years ended June 30, 1958, 1959, 1960 and 1961 under the heading "Other Deductions—Interest on facility loan," and in each of the fiscal years ended June 30, 1962 and 1963 under the heading "Interest." Following the audit of the plaintiff's income tax returns, such deductions were disallowed. Such disallowances form the basis of the issues specified in paragraph 31(a) hereof:

9. For each of the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962 and 1963, the New Orleans Bank for Cooperatives declared a patronage refund to the plaintiff in accordance with 12 U.S.C., Section 1134l(b). Each such patronage refund was declared in the form of Class C stock having a par value of \$100.00 per share. The total par value of the patronage refund so declared for each such fiscal year is set out in paragraph 19 hereof. Plaintiff did not include in the income reported in its federal income tax returns, \$99.00 per share of the par



value of such stock thus declared to it. For purposes of federal income taxation, in each year in which a patronage refund was declared to it, the plaintiff reduced its interest expense by \$1.00 for each share of Class C stock making up such patronage refund. Following the audit of the plaintiff's income tax returns, \$99.00 of the par value of such stock was included in the plaintiff's income. Such conclusions form the basis of the issue specified in paragraph 31 (b) hereof.

10. In applying for loans from the New Orleans Bank for Cooperatives, the plaintiff filed with said bank documents containing substantially the information called for in Exhibits 1a, 1b, 1c, 1d, 1e and 3 of the Manual for Banks for Cooperatives, a true copy of which is attached hereto as Exhibit 17.

11. In connection with loans obtained by the plaintiff from the New Orleans Bank for Cooperatives, the plaintiff executed loan agreements and installment notes. True copies of a loan agreement and installment note typical of the ones referred to are attached hereto as Exhibits 5-A and 5-B, respectively.

12. At or near the end of each calendar quarter during which the New Orleans Bank for Cooperatives had a loan outstanding to the plaintiff, the bank mailed to the plaintiff a notice of the amount of interest that was due on the plaintiff's debt and the amount of the Class C stock of the bank the plaintiff was required to purchase at par value (pursuant to the loan documents which contain the requirements of the regulations and the statute) for such calendar quarter. True copies of notices typical of the one referred to are attached hereto as Exhibits 6-A and 6-B. Exhibit 6-B is as follows:

New Orleans Bank for Cooperatives, New Orleans, La.	Loan No.	Item		Amount Due
Interest:				
Notice of payments due, date, June 27, 1961.....	{	From	To	Rate
	F-2128	4/1/61	6/30/61.	5 \$45,093. 15
Prompt remittance of the amount due payable at par in New Orleans will be appreciated.	F-2239			5 5,349. 32
C stock subscription.....				7,566. 37
Coastal Chemical Corpora- tion, Box 563, Yazoo City, Mississippi:				
Principal.....				
Other.....				
Total.....				58,008. 84

13. The board of directors of the New Orleans Bank for Cooperatives adopted a resolution on December 15, 1955, wherein it was provided that no certificate evidencing ownership of Class C stock in the bank should be issued (see Exhibit 10-C). The bank has never issued Class C stock certificates. However, the owner of such stock was entitled to have its ownership of such stock, as reflected by the books of the bank, confirmed in writing by the bank at any time upon request. Furthermore, the New Orleans Bank for Cooperatives mailed to each owner of its Class C stock as soon as practicable following the end of each fiscal year a statement setting forth the amount of such stock that was owned by such owner at the beginning and end of each such fiscal year. A true copy of a statement typical of the one referred to is attached hereto as Exhibit 7.

14. Exhibit 16 to the Manual for Banks for Cooperatives (which manual is attached hereto as Exhibit 17) consists of the form of Class C stock certificate approved by the Farm Credit Administration for issuance by banks for cooperatives.

15. During the fiscal years ended June 30, 1957, 1958, 1959, 1960, 1961, 1962 and 1963, the plaintiff purchased 2,118,9968 shares of the Class C stock of the New Orleans Bank for Cooperatives paying therefor \$100 per share (pursuant to the loan documents which contain the requirements of the regulations and the statute).

16. The following chart shows the years during which the plaintiff purchased the Class C stock of the New Orleans Bank for Cooperatives (referred to in paragraph 15); the portion of the amount paid for said stock that was deducted each year for federal income tax purposes; the portion of the amount paid for said stock that was added each year to previously reported similar investments in Class C stock; and the cumulative balance each year of the amounts reported as such investments in such Class C stock:

FYE 6-30	Par Value of Class C Stock Purchased as Above	Portion of Purchase Price of Class C Stock Deducted Under Interest in Returns	Portion of Amount Paid for Class C Stock Reported as Investments	
			Yearly Addition	Cumulative Balance
1957-----	\$100. 00		\$100. 00	\$100. 00
1958-----	11, 788. 19	\$11, 670. 19	118. 00	218. 00
1959-----	33, 956. 20	33, 617. 20	339. 00	557. 00
1960-----	47, 119. 23	46, 646. 23	473. 00	1, 030. 00
1961-----	41, 712. 88	41, 295. 88	417. 00	1, 447. 00
1962-----	35, 072. 16	34, 721. 16	351. 00	1, 798. 00
1963-----	42, 151. 02	41, 730. 02	421. 00	2, 219. 00

17. With respect to the chart made a part of paragraph 16:

(a) The amounts listed as having been deducted in the fiscal years ended June 30, 1958, 1959, 1960 and 1961 were deducted in the schedules of income and expense of the plaintiff's federal income tax returns for the fiscal years ended June 30, 1958, 1959, 1960 and 1961, respectively, as parts of the amounts deducted under the heading "Other Deductions-Interest on facility loan." The amounts listed as having been deducted in the fiscal years ended June 30, 1962 and 1963, were deducted on page 1 (Item 18) of the plaintiff's federal income tax returns for the fiscal years ended June 30, 1962 and 1963, respectively, as parts of the amounts deducted under the heading "Interest." The one qualifying share purchased in 1957 prior to obtaining any loan was treated as an investment. Thereafter, all deductions were on the basis of \$99.00 per share.

(b) Each amount listed as a yearly addition to Class C stock reported as an investment represents the difference between the amount paid for Class C stock purchased by the

plaintiff during the year specified and the amount of such payment as was deducted as interest for such year.

(c) Each amount listed as a cumulative balance for a particular fiscal year is reported under the heading "Investments" or "Other investments" in the balance sheet of the plaintiff's federal income tax return for such year.

(d) Where the shares of stock (including fractional shares) are listed in terms of par value, the number of shares involved may be determined by dividing such amounts by \$100, the par value of the stock per share.

18. The amounts paid by the plaintiff (pursuant to the loan documents which contain the requirements of the regulations and the statute) for the Class C stock of the New Orleans Bank for Cooperatives were entered on the books of said bank as "INVESTMENT IN C STOCK (INTEREST OVERRIDE)," except the cost of the first share purchased was entered as a "QUALIFYING SHARE." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives which reflects, *inter alia*, the plaintiff's investment in Class C stock of such bank is attached hereto as *Exhibit 2*.

19. The New Orleans Bank for Cooperatives declared to the plaintiff a patronage refund, based upon interest earned on loans to plaintiff, in the form of Class C stock for each of the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962 and 1963. The par value of the Class C stock declared for each such year as a patronage refund to the plaintiff was as follows:

FYE 6-30:	Class C Stock Par Value
1958 -----	\$14,345.04
1959 -----	47,361.32
1960 -----	51,689.59
1961 -----	60,541.52
1962 -----	52,305.05
1963 -----	63,067.29

On or about July 15 succeeding the end of each fiscal year, the bank declared patronage refunds for the preceding fiscal year based upon interest earned during such preceding fiscal year on loans to the plaintiff and on or about such date notified the plaintiff of the amount of such patronage refunds. (See Exhibit 7.) The plaintiff entered such patronage refunds upon its records and reported them in its federal income tax returns in the fiscal year in which it received such notice, as follows:



FYE 6-30	Par Value of Class C Stock Declared as Patronage Refund	Amount of Patronage Refund Entered upon Plaintiff's Records and Reported as Investment	
		Yearly Addition	Cumulative Balance
1959.....	\$14,345.04	\$143.00	\$143.00
1960.....	47,361.32	474.00	617.00
1961.....	51,689.59	516.00	1,133.00
1962.....	60,541.52	605.00	1,738.00
1963.....	52,305.05	523.00	2,261.00
1964.....	63,067.29	630.00	2,891.00

20. The par value of the Class C stock of the New Orleans Bank for Cooperatives which was declared as a patronage refund to the plaintiff for each year was entered on the books of said bank as "PATRONAGE REFUND—C STOCK." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives whereon the plaintiff's Class C stock patronage refunds were recorded is attached hereto as Exhibit 2.

21. A part of the surplus of the New Orleans Bank for Cooperatives for each of the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962 and 1963 was allocated to the plaintiff as follows:

FYE 6-30:	Amount Allocated
1958 .....	\$6,781.42
1959 .....	20,947.65
1960 .....	22,855.55
1961 .....	26,875.13
1962 .....	23,370.87
1963 .....	26,918.00

22. The amounts of the surplus of the New Orleans Bank for Cooperatives which were allocated to the plaintiff for each year were entered on the books of said bank as "PATRONAGE REFUND—ALLOCATED SURPLUS." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives whereon the surplus allocated to the plaintiff was recorded is attached hereto as Exhibit 2. Said bank did not notify the plaintiff in writing of the amount of surplus thus allocated to plaintiff for any year. The bank has never distributed any portion of the surplus so allocated as Class C stock.



23. The plaintiff did not enter upon its records nor include in its federal income tax returns any part of the surplus allocated to it by the New Orleans Bank for Cooperatives.

24. The federal income tax returns filed by the plaintiff for the fiscal years ended June 30, 1957, 1958, 1959, 1960, 1961, 1962, and 1963 were audited by an Internal Revenue Agent of the Internal Revenue Service. In connection with that audit, the Internal Revenue Agent prepared a report of his findings, dated January 10, 1966, and therein proposed, *inter alia*, (a) that the portion of the amount paid by the plaintiff (pursuant to the loan documents which contain the requirements of the regulations and the statute) for Class C stock of the New Orleans Bank for Cooperatives which the plaintiff had deducted in each of its federal income tax returns for the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962 and 1963 be disallowed and (b) that the par value of the Class C stock declared to the plaintiff as patronage refund for each of the fiscal years ended June 30, 1958, 1959, 1960, 1961 and 1962, to the extent not reported as investments, be included as income in the plaintiff's federal income tax return for the next succeeding year, respectively. A true copy of the report of the Internal Revenue Agent, dated January 10, 1966, is attached hereto as Exhibit 3.

(a) The amount listed as additional income for the fiscal years ended June 30, 1959, 1960, 1961, 1962 and 1963, include the par value of the Class C stock listed in the second chart in paragraph 19 as declared to the plaintiff as patronage refunds by the New Orleans Bank for Cooperatives in the fiscal years ended June 30, 1959, 1960, 1961, 1962 and 1963, respectively. Also, for the fiscal years ended June 30, 1958, 1959, 1960, 1961, 1962, and 1963, the amounts listed as additional income include the net amounts of the par value of the Class C stock purchased from the New Orleans Bank for Cooperatives by the plaintiff (pursuant to the loan documents which contain the requirements of the regulations and the statute) which are listed in the following chart as charged to interest expense by the plaintiff in such years respectively:

FYE 6-30	Par Value of C Stock Purchased	Portions of Par Value of C Stock Purchased		Amounts of Patronage Refunds Reported as Investments (By Decreasing Interest Expense)	Net Amounts Charged to Interest Expense
		Reported as Investments	Charged as Expense		
1958-----	\$11,788.19	\$118.00	\$11,670.19	-----	\$11,670.19
1959-----	33,956.20	339.00	33,617.20	\$143.00	33,474.20
1960-----	47,119.23	473.00	46,646.23	747.00	46,172.23
1961-----	41,712.88	417.00	41,295.88	516.00	40,779.88
1962-----	35,072.16	351.00	34,721.16	605.00	34,116.16
1963-----	42,151.02	421.00	41,730.02	523.00	41,207.02

(b) The effect of including the "Net Amounts Charged to Interest Expense" in the plaintiff's income was to deny to the plaintiff deductions of \$99.00 per share that it claimed with respect to the Class C stock it purchased and to treat such amounts as capital expenditures.

(c) Ninety-nine dollars of the par value of the Class C stock declared to the plaintiff as patronage refunds were not included as income in the plaintiff's federal income tax returns. One dollar per share was carried as a reduction of interest expense and as an asset (investment).

27. At the direction of the Commissioner of Internal Revenue, tax deficiencies were assessed against the plaintiff for each of the fiscal years ended June 30, 1961, 1962 and 1963, in the total amounts of \$231, \$254,268.94 and \$120,180.78, respectively. The assessments were based upon the taxable income proposed by the Internal Revenue Agent except that certain patronage refund deductions, not involved herein, were allowed the plaintiff for the fiscal years ended June 30, 1962 and 1963. A true copy of the Audit Statement whereon such patronage refund deductions were allowed is attached hereto as Exhibit 4.

29. On October 16, 1967, the plaintiff timely filed the inclusion in its income of the \$99.00 per share of the par value of the patronage refunds declared to it in the form of Class C stock by the New Orleans Bank for Cooperatives.

30. The claims for refund (referred to in paragraph 29) were disallowed and the plaintiff was notified of such disallow-

ance by certified letters dated December 13, 1967. Thereafter, this action was timely instituted.

31. The following issues are to be litigated at the trial:

(a) Whether for purposes of federal income taxation the plaintiff was entitled to deduct from its gross income (as the plaintiff contends in its complaint) any part (and, if so, the amount) of the par value of the Class C stock it purchased (pursuant to the loan documents which contain the requirements of the regulations and the statute) from the New Orleans Bank for Cooperatives during the fiscal years ending June 30, 1958, 1959, 1960, 1961, 1962 and 1963. See particularly paragraph 8 hereof.

(b) Whether any part (and, if so, the amount) of the par value of the patronage refunds declared to the plaintiff in the form of Class C stock by the New Orleans Bank for Cooperatives in the fiscal years ended June 30, 1959, 1960, 1961, 1962 and 1963 was includable in the plaintiff's gross income for purposes of federal income taxation. See, particularly paragraph 9 hereof.

32. On May 20, 1959, the board of directors of the New Orleans Bank of Cooperatives approved as a goal a schedule for Class A stock retirement, such schedule being a general objective. A true and exact excerpt from the minutes of the regular meeting of the board of directors of the New Orleans Bank for Cooperatives reflecting such approval and a true copy of the retirement schedule thus proposed by the bank (captioned N.O.B.C. Program of Class A Stock Retirement) are attached hereto as Exhibit 8.

33. The board of directors of the New Orleans Bank for Cooperatives has never determined that the capital stock of said bank was impaired.

34. The New Orleans Bank for Cooperatives has never established a contingency reserve within the meaning of 12 U.S.C., Section 11341(a)(4) and has never received a deposit to an established guaranty fund in lieu of a purchase of its Class B or Class C stock.

35. Attached hereto as Exhibits 9-A, 9-B, 9-C and 9-D, respectively, are true copies of the minutes of the regular monthly meetings of the board of directors of the New Orleans Bank for Cooperatives held on January 20, 1960; April 21, 1960; May 19, 1960; and June 22, 1960. Attached to and made a part of the minutes of May 19, 1960 (Exhibit

9-C) and June 22, 1960 (Exhibit 9-D) are true copies of parts of monthly reports to the board of directors for the months of April and May, 1960, respectively, which were prepaid and kept in the regular course of the business of the New Orleans Bank for Cooperatives. Attached hereto as Exhibit 9-E is a statement of Class C stock and allocated surplus applied in liquidations January 1, 1956 to June 30, 1963. Exhibit 9-E, which is attached hereto and which is to be considered a part hereof, shows, *inter alia*, the par value of Class C stock of the New Orleans Bank for Cooperatives which was owned by defaulting debtors of said bank and the amounts of the surplus of said bank which had been allocated to said defaulting debtors, which was applied to the debts of such debtors when they went out of business and were liquidated.

36. Attached hereto as Exhibits 10-A, 10-B, 10-C and 10-D are true copies of resolutions duly adopted by the board of directors of the New Orleans Bank for Cooperatives and kept by said bank in the regular course of its business.

37. Attached hereto as Exhibit 11 is a true and exact excerpt from the minutes of the regular meeting of the board of directors of the New Orleans Bank for Cooperatives held on November 15, 1961.

38. Attached hereto as Exhibits 12-A, 12-B and 12-C, respectively, are true copies of Reports to Stockholders for the fiscal years ended June 30, 1961, 1962 and 1963 which were prepared and issued by the New Orleans Bank of Cooperatives in the regular course of its business.

39. Attached hereto as Exhibits 13-A, 13-B, 13-C and 13-D, respectively, are true copies of Reports to the Board of Directors of the New Orleans Bank for Cooperatives for the fiscal years ended June 30, 1960, 1961, 1962 and 1963, which were prepared and kept by the New Orleans Bank for Cooperatives in the regular course of its business.

40. The New Orleans Bank for Cooperatives, which has its principal office in New Orleans, Louisiana, was organized and chartered pursuant to the provisions of 12 U.S.C., Section 1134.

43. Attached hereto as Schedule A, which is to be considered a part hereof, is a chart which shows the net worth of the New Orleans Bank for Cooperatives as of the end of each of its fiscal years ended June 30, 1956, 1957, 1958, 1959, 1960, 1961, 1962 and 1963.



44. Attached hereto as Schedule B, which is to be considered a part hereof, is a chart which shows the par value of Class C stock of the New Orleans Bank for Cooperatives and amounts of surplus allocated to patrons by said bank which were transferred on the dates indicated therein.

45. Attached hereto as Schedule C, which is to be considered a part hereof, is a chart which shows, with respect to each of the fiscal years ended June 30, 1957, 1958, 1959, 1960, 1961, 1962 and 1963, the amount of Class A stock retired at par value; the sum of the par value of all Class C stock issued; the amount of surplus allocated to patrons; the amount of franchise tax paid; the amount of cash dividends paid on Class B stock; and the par value of Class C stock declared as patronage refunds, by the New Orleans Bank for Cooperatives.

46. Attached hereto as Schedule D, which is to be considered a part hereof, is a chart which shows the amount of loans the New Orleans Bank for Cooperatives had outstanding, less outstanding participation certificates; the par value of the several classes of capital stock the said bank had outstanding; and the amount of surplus the said bank had reserved and had allocated to patrons, as of the end of each of the fiscal years ended June 30, 1956, 1957, 1958, 1959, 1960, 1961, 1962 and 1963.

47. Attached hereto as Schedule E, which is to be considered a part hereof, is a chart which shows the par value of the Class C stock the New Orleans Bank for Cooperatives had outstanding, the amount of surplus the said bank had allocated to patrons, and the totals thereof, respectively, as of the end of each of the fiscal years ended June 30, 1956, 1957, 1958, 1959, 1960, 1961, 1962 and 1963.

48. Attached hereto as Schedule F, which is to be considered a part hereof, is a chart which shows the amount of loans the Thirteen Banks for Cooperatives had outstanding, less outstanding participation certificates, the par value of the several classes of capital stock the said banks had outstanding; and the amount of surplus the said banks had reserved and had allocated to patrons, as of the end of each of the fiscal years ended June 30, 1956, 1957, 1958, 1959, 1960, 1961, 1962 and 1963.

49. The New Orleans Bank for Cooperatives, at all times material herein, was operated under the supervision of the Farm Credit Administration, an independent agency in the executive branch of the Government. The Farm Credit Admin-



istration was authorized by law to make rules and regulations under the Farm Credit Act of 1933 and Acts amendatory thereto. (12 U.S.C., Section 665.) Attached hereto as Exhibit 17 is an official publication of the Farm Credit Administration entitled Manual for Banks for Cooperatives (including copies of all amendments thereto through June 30, 1963), which includes regulations of the Farm Credit Administration governing the operations of banks for cooperatives; certain statements of policy relating to their activities, various basic forms and procedures; and selected informational material assembled for convenient reference.

50. Attached hereto as Exhibits 18-A and 18-B, respectively, are official publications of the Farm Credit Administration entitled:

(a) Banks for Cooperatives, a quarter of a century of progress.

(b) Banks for Cooperatives, how they operate.

51. Attached hereto as Exhibits 19-A, 19-B, 19-C, 19-D, 19-E, 19-F, 19-G and 19-H, respectively, are true copies of the Annual Reports of the Farm Credit Administration to Congress for the fiscal years ended June 30, 1956, 1957, 1958, 1959, 1960, 1961, 1962 and 1963. These Annual Reports are official publications of the Farm Credit Administration and were prepared pursuant to Acts of Congress (e.g., 12 U.S.C. Section 636(e)).

52. Attached hereto as Exhibit 21 are true copies of nine letters, dated December 8, 1955; October 31, 1956; August 5, 1957; July 21, 1958; July 22, 1959; July 21, 1960; July 21, 1961; July 26, 1962 and July 17, 1963, from the officials of the United States Treasury Department to the Governor of the Farm Credit Administration, in each of which, pursuant to 12 U.S.C., Section 1134l(a)(3), the average rate of interest on all public issues of public debt obligations of the United States issued during the fiscal year most recently ending is certified.

Stipulated and agreed to by:

/s/ JOHN C. SATTERFIELD  
Attorney for Plaintiff

ROBERT E. HAUBERG  
United States Attorney  
Attorney for defendant

Date: 11-6-68

By: /s/ Jack D. Warren  
JACK D. WARREN  
Attorney, Tax Division

Department of Justice, Washington, D.C. 20530

Date: 11-6-68

(All of the Exhibits attached to the foregoing instrument  
will be sent to the Court in original form.)

SCHEDULE A.—New Orleans Bank for Cooperatives, schedule of net worth FYE June 30, 1956 through FYE June 30, 1963

	FYE 6-30-56	FYE 6-30-57	FYE 6-30-58	FYE 6-30-59	FYE 6-30-60	FYE 6-30-61	FYE 6-30-62	FYE 6-30-63
A stock.....	\$6,928,100.00	\$6,744,800.00	\$6,817,000.00	\$6,270,000.00	\$6,970,000.00	\$6,620,000.00	\$6,270,000	\$4,880,000
B stock.....	360,400.07	364,722.06	360,666.29	367,819.74	406,431.14	403,747.34	402,119	369,662
C stock.....	86,880.66	287,864.46	537,524.81	881,454.21	1,291,082.56	1,729,282.16	2,188,366	2,681,548
Old stock.....	201,846.26	135,804.19	74,940.49	44,026.53				
Subtotal.....	\$7,576,966.98	\$7,536,190.60	\$7,490,131.59	\$7,653,300.48	\$7,666,483.70	\$7,753,009.50	\$7,830,475	\$7,901,110
Surplus—reserved.....	3,627,888.15	3,627,888.15	3,627,888.15	3,627,888.15	3,627,888.15	3,627,888.15	3,627,888	3,627,888
Surplus—allocated to patrons.....	27,760.84	94,461.09	163,324.79	264,469.64	346,274.03	463,454.06	577,968	711,449
Net worth.....	\$11,223,644.97	\$11,257,539.93	\$11,281,344.53	\$11,435,668.77	\$11,642,645.88	\$11,844,362.33	\$12,036,321	\$12,300,447

SCHEDULE B.—New Orleans Bank for Cooperatives, schedule of Class C stock and allocated surplus transfers September 30, 1959—June 12, 1963

Date of Transfer	Transferred From	Transferred To	C Stock —Par Value—	Surplus Allocated to Patrons
9-20-59	Holmes County Grain Elevator Association, Lexington, Mississippi.	Holmes County Cooperative, Lexington, Mississippi.	\$1,826.58	\$446.22
6-30-61	Louisiana-Mississippi Milk Prod. Assn., Poplar- ville, Mississippi. American Rice Growers Cooperative Assn., Lake Charles, Louisiana.	Gulf Milk Association, Inc., Franklinton, Louisiana. MFC Services, La. Rice Grbwers, to Roanoke Rice Mill. Assigned to C. S. Whittington-----	5,802.69	1,571.52
6-12-63	Rising Sun Gin Company, Greenwood, Missis- sippi.	Assigned to C. S. Whittington-----	3,866.61	960.23

**SCHEDULE C.—New Orleans Bank for Cooperatives, schedule of Class A stock retired (par value); par value of all Class C stock issued; surplus allocated to patrons; franchise tax paid; cash dividends paid on Class B stock; and par value of Class C stock declared as patronage refunds, FYE June 30, 1957 through June 30, 1963**

	FYE 6-30	Class A Stock Retired—Par Value	Total Class C Stock Issued— Par Value	Surplus Allocated to Patrons	Franchise Tax Paid	Cash Dividends Paid on Class B Stock	Class C Stock Declared as Patronage Refunds—Par Value
1957	-----	\$181,300	\$201,274	\$66,700	\$48,590	\$10,942	\$140,569
1958	-----	229,800	249,661	68,864	50,101	10,820	145,670
1959	-----	247,000	343,929	91,145	56,627	10,735	206,073
1960	-----	300,000	409,599	93,804	60,543	11,826	221,644
1961	-----	350,000	438,209	115,181	74,507	12,112	261,107
1962	-----	350,000	429,094	114,503	75,233	9,063	256,409
1963	-----	390,000	523,192	113,491	75,724	11,987	312,759

SCHEDULE D.—New Orleans Bank for Cooperatives, Schedule of loans outstanding, less outstanding participation certificates; capital stock outstanding; surplus reserved; and surplus allocated to patrons, FYE June 30, 1966 through FYE June 30, 1963

	FYE 6-30-63	FYE 6-30-62	FYE 6-30-61	FYE 6-30-60	FYE 6-30-59	FYE 6-30-58	FYE 6-30-57	FYE 6-30-56
Loans to cooperative associations outstanding.....	\$27,939,969	\$19,627,247	\$20,334,247	\$19,881,001	\$21,523,383	\$17,668,177	\$12,937,969	\$9,513,442
Less participation certificates outstanding.....	7,170,320	3,082,811	2,221,723	3,110,193	4,665,768	332,600	601,800	751,900
Total.....	20,769,639	16,544,436	18,112,524	16,770,808	17,162,625	17,335,577	12,336,169	8,761,542
Capital Stock:								
Class A.....	4,880,000	5,270,000	5,620,000	5,970,000	6,270,000	6,517,000	6,744,809	6,928,100
Class B.....	399,862	402,119	403,747	405,431	357,820	360,666	364,722	360,460
Class C.....	2,681,548	2,158,366	1,729,262	1,291,063	881,454	537,525	287,895	98,500
Other (Old stock).....					44,026	74,941	135,804	201,846
Total.....	7,961,110	7,830,475	7,753,009	7,666,494	7,553,300	7,490,132	7,534,191	7,576,906
Surplus reserved.....	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888
Surplus allocated to patrons.....	711,449	577,958	463,455	348,274	254,470	163,325	94,461	27,761

SCHEDULE E.—New Orleans Bank for Cooperatives, schedule of Class C stock outstanding and surplus allocated to patrons FYE June 30, 1966 through FYE June 30, 1963

	FYE 6-30-63	FYE 6-30-62	FYE 6-30-61	FYE 6-30-60	FYE 6-30-59	FYE 6-30-58	FYE 6-30-57	FYE 6-30-56
Class C Stock.....	\$2,681,548	\$2,158,358	\$1,729,262	\$1,291,053	\$881,454	\$537,525	\$287,865	\$86,590
Surplus allocated to patrons.....	711,449	577,958	463,455	348,274	254,470	163,325	94,461	27,761
Total.....	\$3,392,997	\$2,736,314	\$2,192,717	\$1,639,327	\$1,135,924	\$700,850	\$382,326	\$114,351



SCHEDULE F.—The Thirteen Banks for Cooperatives, schedule of loans outstanding less outstanding participation certificates; capital stock outstanding; surplus reserved; and surplus allocated to patrons, FYE June 30, 1958 through FYE June 30, 1963

	FYE 6-30-53	FYE 6-30-52	FYE 6-30-51	FYE 6-30-50	FYE 6-30-49	FYE 6-30-48	FYE 6-30-47	FYE 6-30-46
Loans to cooperative associations outstanding.....	\$700,562,049	\$692,362,803	\$694,548,829	\$650,712,891	\$526,880,724	\$408,287,152	\$384,328,803	\$349,074,139
Less participation certificates outstanding.....	13,061	18,367					2,970	6,538
Total.....	\$700,548,988	\$692,344,436	\$694,548,829	\$650,712,891	\$526,880,724	\$408,287,152	\$384,325,833	\$349,067,607
Capital stock and guaranty fund:								
Class A.....	80,911,100	94,837,500	108,817,000	118,286,900	126,330,800	134,798,700	141,672,360	147,300,000
Class B.....	11,229,389	12,235,953	13,186,012	14,009,049	14,598,439	14,977,322	15,399,393	15,607,675
Class C.....	68,830,284	54,663,776	42,407,410	31,028,529	23,214,786	15,303,640	8,703,326	2,820,037
Other.....	52,300	89,500	198,400	283,443	412,367	520,474	1,229,604	2,254,208
Total.....	\$161,023,073	\$167,826,769	\$162,608,822	\$164,176,521	\$164,535,512	\$165,659,136	\$168,944,613	\$168,042,520
Surplus reserved.....	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198
Surplus allocated to patrons.....	19,640,915	17,542,510	13,600,203	10,049,081	7,720,210	5,077,085	2,985,071	977,000

In the United States District Court for the Southern District  
of Mississippi Western Division

Civil Action No. 1213

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

STIPULATION AS TO FACTS AND DOCUMENTS

(Filed Nov. 6, 1968)

It is hereby stipulated by the parties to this action, by and through their respective counsel, that, for purposes of this action only, the following facts are true and that the exhibits attached hereto are true copies of genuine original documents, any or all of which may be introduced as evidence at the trial hereof, subject only to pertinent objections as to competency, relevancy and materiality. Each party, however, expressly reserves the right to offer at the trial such other and further evidence as is not inconsistent with the facts stipulated herein.

1. This is a civil action instituted by the plaintiff, Mississippi Chemical Corporation, against the defendant, the United States of America, for the recovery of \$85,299.51 in income taxes and interest assessed against and collected from the plaintiff by the defendant for the fiscal years ended June 30, 1961, 1962 and 1963.

2. The pleadings raising the issues to be resolved are the complaint and the answer.

3. Federal jurisdiction is invoked herein under 28 U.S.C., Section 1340 and/or 28 U.S.C., Section 1346(a)(1).

4. At all times material herein, the plaintiff—

(a) was a corporation organized under the laws of Mississippi with its domicile and principal place of business in Yazoo City, Yazoo County, Mississippi.

(b) was a cooperative association as defined in the Agricultural Marketing Act, as amended;

(c) was subject to the tax imposed by 26 U.S.C., Section 11; (The plaintiff was not, at any time material herein, a farmers' cooperative organization as described in 26 U.S.C., Section 521(b)(1).)

(d) kept its books and records on the accrual method of accounting and on a July 1 to June 30 fiscal year basis.

5. The plaintiff timely filed its federal income tax returns (Forms 1120) for the fiscal years ended June 30, 1961, 1962 and 1963, with the District Director of Internal Revenue for the State of Mississippi. True copies of those returns are attached hereto as Exhibits 30-A, 30-B and 30-C, respectively. The plaintiff timely filed an amended federal income tax return (Form 1120) for the fiscal year ended June 30, 1962, with the District Director of Internal Revenue for the State of Mississippi. A true copy of said amended return is attached to Exhibit 30-B as a part thereof.

6. The following chart shows the net income, including long-term capital gains; the special deductions; the taxable income reported by the plaintiff in each of its federal income tax returns for the fiscal years ended June 30, 1961, 1962 and 1963:

FYE 6-30	Net Income, Including Long-Term Capital Gains	Special Deductions	Taxable Income
1961-----	\$169, 102. 10	(\$56, 269. 53)	\$112, 832. 57
1962-----	*606, 184. 91	-----	606, 184. 91
1963-----	524, 899. 24	(7, 323. 41)	517, 575. 83
	\$1, 300, 186. 25	(\$63, 592. 94)	\$1, 236, 593. 31

\*Per amended return.

7. In its federal income tax returns for the fiscal years ended June 30, 1961, 1962 and 1963, the plaintiff reported tax liabilities of \$46,548.07, \$297,812.26 (per amended return) and \$204,016.71 (after investment credit), respectively, which it paid at or before the time such returns were filed.

8. During each of the fiscal years ended June 30, 1961, 1962 and 1963, the plaintiff was a borrower from the New Orleans Bank for Cooperatives. As such borrower, it was required under 12 U.S.C., Section 1134d(a)(3) to invest quarterly in the Class C stock of said bank an amount equal to 15 percent of the amount of interest payable by it on its loans. The 15 percent rate was authorized by 12 U.S.C., Section 1134d(a)(3) and was prescribed by the board of directors of the bank with the approval of the Farm Credit Administration. Pursuant to said in-

vestment requirement, the plaintiff purchased the Class C stock of the New Orleans Bank for Cooperatives referred to in paragraph 16 hereof. In its federal income tax returns, the plaintiff claimed \$99.00 of each \$100.00 thus invested as a deduction in the fiscal year ended June 30, 1961 under the heading "Interest Expense: on Facility Loan, etc.", and in each of the fiscal years ended June 30, 1962 and 1963 under the heading "Interest." Following the audit of the plaintiff's income tax returns, such deductions were disallowed. Such disallowances form the basis of the issue specified in paragraph 31(a) hereof.

9. For each of the fiscal years ended June 30, 1960, 1961 and 1962, the New Orleans Bank for Cooperatives declared a patronage refund to the plaintiff in accordance with 12 U.S.C., Section 1134l(b). Each such patronage refund was declared in the form of Class C stock having a par value of \$100.00 per share. The total par value of the patronage refund so declared for each such fiscal year is set out in paragraph 19 hereof. The plaintiff did not include in the income reported in its federal income tax returns for the fiscal years ended June 30, 1961, 1962 and 1963, \$99.00 per share of the par value of such stock thus declared to it. For purposes of federal income taxation, in each year in which a patronage refund was declared to it, the plaintiff reduced its interest expense by \$1.00 for each share of Class C stock making up such patronage refund. Following the audit of the plaintiff's income tax returns, \$99.00 of the par value of such stock was included in the plaintiff's income. Such inclusions form the basis of the issue specified in paragraph 31(b) hereof.

10. In applying for loans from the New Orleans Bank for Cooperatives, the plaintiff filed with said bank documents containing substantially the information called for in Exhibits 1a, 1b, 1c, 1d, 1e and 3 of the Manual for Banks for Cooperatives, a true copy of which is attached as Exhibit 17 to the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.).

11. In connection with loans obtained by the plaintiff from the New Orleans Bank for Cooperatives, the plaintiff executed loan agreements and installment notes. True copies of a loan agreement and installment note typical of the ones referred to are attached as Exhibits 5-A and 5-B, respectively, to the Stipulation As To Facts and Documents filed on even date

herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.).

12. At or near the end of each calendar quarter during which the New Orleans Bank for Cooperatives had a loan outstanding to the plaintiff, the bank mailed to the plaintiff a notice of the amount of interest that was due on the plaintiff's debt and the amount of the Class C stock of the bank the plaintiff was required to purchase at par value (pursuant to the loan documents which contain the requirements of the regulations and the statute) for such calendar quarter. True copies of notices typical of the one referred to are attached as Exhibits 6-A and 6-B to the Stipulation As To Facts and Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.). Exhibit 6-A is as follows:

New Orleans Bank for Cooperatives New Orleans, La.	Loan No.	Item	Amount Due
<b>Interest</b>			
Notice of payments due, date, June 27, 1961	From 0-2009-4-1-61	To 6-30-61	Rate 4 1/4 % \$1,324.49
	F-2008		5 10,595.89
	F-2081		5 9,660.96
Prompt remittance of the amount due pay- able at par in New Orleans will be appreciated.			
C stock subscription			3,237.20
Mississippi Chemical Corporation, Box 563, Yazoo City, Mississippi:			
Principal			
Other			
<b>Total</b>			<b>24,818.54</b>

13. The board of directors of the New Orleans Bank for Cooperatives adopted a resolution on December 15, 1955, wherein it was provided that no certificate evidencing ownership of Class C stock in the bank should be issued (see Exhibit 10-C



attached to the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.)) and such bank has never issued Class C stock certificates. However, the owner of such stock was entitled to have its ownership of such stock as reflected by the books of the bank, confirmed in writing by the bank at any time upon request. Furthermore, the New Orleans Bank for Cooperatives mailed to each owner of its Class C stock as soon as practicable following the end of each fiscal year a statement setting forth the amount of such stock that was owned by such owner at the beginning and end of each such fiscal year. A true copy of a statement typical of the one referred to is attached as Exhibit 7 to the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.).

14. Exhibit 16 to the Manual for Banks for Cooperatives (which manual is attached as Exhibit 17 to the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.)) consists of the form of Class C stock certificate approved by the Farm Credit Administration for issuance by banks for cooperatives.

15. During the fiscal years ended June 30, 1961, 1962 and 1963, the plaintiff purchased 551,1319 shares of the Class C stock of the New Orleans Bank for Cooperatives paying therefor \$100 per share (pursuant to the loan documents which contain the requirements of the regulations and the statute).

16. The following chart shows the years during which the plaintiff purchased the Class C stock of the New Orleans Bank for Cooperatives (referred to in paragraph 15); the portion of the amount paid for said stock that was deducted each year for federal income tax purposes; the portion of the amount paid for said stock that was added each year to previously reported similar investments in Class C stock; and the cumulative balance each year of the amounts reported as such investments in such Class C stock:

FYE 6/30	Par Value of Class C Stock Purchase as Above	Portion of Pur- chase Price of Class C stock Deducted Under Interest in Returns	Portion of Amount Paid For Class C Stock Reported as Investments	
			Yearly addi- tion	Cumulative Balance
1960				\$553.00
1961	\$18,940.09	\$18,751.09	\$189.00	742.00
1962	16,865.75	16,696.75	169.00	911.00
1963	19,307.35	19,114.35	193.00	1,104.00

<sup>1</sup> Includes \$100 paid for one qualifying share in 1956 (not in issue).

17. With respect to the chart made a part of paragraph 16:

(a) The amount listed as having been deducted in the fiscal year ended June 30, 1961, was deducted in the schedule of income and expense of the plaintiff's federal income tax return for the fiscal year ended June 30, 1961, under the heading "Other Deductions—Interest Expense: on Facility Loan, etc." The amounts listed as having been deducted in the fiscal years ended June 30, 1962 and 1963, were deducted on page 1 (Item 18) of the plaintiff's federal income tax returns for the fiscal years ended June 30, 1962 and 1963, respectively, as parts of the amounts deducted under the heading "Interest." The one qualifying share purchased in 1956 prior to obtaining any loan was treated as an investment. Thereafter, all deductions were on the basis of \$99.00 per share.

(b) Each amount listed as a yearly addition to Class C stock reported as an investment represents the difference between the amount paid for Class C stock purchased by the plaintiff during the year specified and the amount of such payment as was deducted as interest for such year.

(c) Each amount listed as a cumulative balance for a particular fiscal year is reported under the heading "Investments" or "Other Investments" in the balance sheet of the plaintiff's federal income tax return for such year.

(d) Where the shares of stock (including fractional shares) are listed in terms of par value, the number of shares involved may be determined by dividing such amounts by \$100, the par value of the stock per share.

18. The amounts paid by the plaintiff (pursuant to the loan documents which contain the requirements of the regulations and the statute) for the Class C stock of the New Orleans Bank for Cooperatives were entered on the books of said bank as

"INVESTMENT IN C STOCK (INTEREST OVERRIDE)," except the cost of the first share purchased was entered as a "QUALIFYING SHARE." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives which reflects, *inter alia*, the plaintiff's investment in Class C stock of such bank is attached hereto as Exhibit 31.

19. The New Orleans Bank for Cooperatives declared a patronage refund, based upon the interest earned on loans to the plaintiff, in the form of Class C stock to the plaintiff for each of the fiscal years ended June 30, 1960, 1961 and 1962. The par value of the Class C stock declared for each such year as a patronage refund to the plaintiff was as follows:

FYE 6-30:	Class C Stock Par Value
1960 -----	\$28,630.64
1961 -----	27,489.40
1962 -----	25,152.83

On or about July 15 succeeding the end of each fiscal year, the bank declared patronage refunds for the preceding fiscal year based upon interest earned during such preceding fiscal year on loans to the plaintiff and on or about such date notified the plaintiff of the amount of such patronage refunds. (See Exhibit 7 attached to the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.). The plaintiff entered such patronage refunds upon its records and reported them in its federal income tax returns in the fiscal year in which it received such notice, as follows:

FYE 6-30.	Par Value of Class C Stock Declared as Patronage Refund	Amount of Patronage Refund Entered Upon Plaintiff's Records and Reported as Investment	
		Yearly Addition	Cumulative Balance
1960 -----			\$873.00
1961 -----	\$28,630.64	\$287.00	1,160.00
1962 -----	27,489.40	275.00	1,435.00
1963 -----	25,152.83	251.00	1,686.00

20. The par value of the Class C stock of the New Orleans Bank for Cooperatives which was declared as a patronage re-

fund to the plaintiff for each year was entered on the books of said bank as "PATRONAGE REFUND—C STOCK." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives whereon the plaintiff's Class C stock patronage refunds were recorded is attached hereto as Exhibit 31.

21. A part of the surplus of the New Orleans Bank for Cooperatives for each of the fiscal years ended June 30, 1961, 1962 and 1963 was allocated to the plaintiff as follows:

	Amount Allocated
1961 -----	\$12,202.89
1962 -----	11,238.75
1963 -----	12,329.84

22. The amounts of the surplus of the New Orleans Bank for Cooperatives which were allocated to the plaintiff for each year were entered on the books of said bank as "PATRONAGE REFUND—ALLOCATED SURPLUS." A true copy of the stock ledger sheet of the New Orleans Bank for Cooperatives whereon the surplus allocated to the plaintiff was recorded is attached hereto as Exhibit 31. Said bank did not notify the plaintiff in writing of the amount of surplus thus allocated to plaintiff for any year. The bank has never distributed any portion of the surplus so allocated as Class C stock.

23. The plaintiff did not enter upon its records nor include in its federal income tax returns any part of the surplus allocated to it by the New Orleans Bank for Cooperatives.

24. The federal income tax returns filed by the plaintiff for the fiscal years ended June 30, 1961, 1962 and 1963 were audited by an Internal Revenue Agent of the Internal Revenue Service. In connection with that audit, the Internal Revenue Agent prepared a report of his findings, dated January 10, 1966, and therein proposed, *inter alia*, (a) that the portion of the amount paid by the plaintiff (pursuant to the loan documents which contain the requirements of the regulations and the statute) for Class C stock of the New Orleans Bank for Cooperatives which the plaintiff had deducted in each of its federal income tax returns for the fiscal years ended June 30, 1961, 1962 and 1963 be disallowed and (b) that the par value of the Class C stock declared to the plaintiff as a patronage refund for each of the fiscal years ended June 30, 1960, 1961 and 1962, to the extent not reported as investments, be included as income in the plaintiff's federal income tax return for the next succeeding year, respectively. A true copy of the report of the Internal



Revenue Agent, dated January 10, 1966, is attached hereto as Exhibit 32.

25. The following chart shows the net income reported by the plaintiff in its federal income tax return for each of the years indicated and the additional income (net of adjustments) and the taxable income proposed in the report of the Internal Revenue Agent for each of such years, respectively.

FYE 6-30	Reported Net Income	Additional Income—Net of Adjustments	Taxable Income
1961.....	<sup>1</sup> \$112,832.57	\$243,080.18	\$355,912.75
1962.....	<sup>2</sup> 606,184.91	72,195.70	678,380.61
1963.....	<sup>1</sup> 517,575.83*	91,824.88	609,200.71
	1,236,593.31	406,900.76	1,643,494.07

<sup>1</sup> Income as reported after special deductions.

<sup>2</sup> Per amended return.

26. With respect to the chart made a part of paragraph 25:

(a) The amounts listed as additional income for the fiscal years ended June 30, 1961, 1962 and 1963, include the par value of the Class C stock listed in the second chart in paragraph 19 as declared to the plaintiff as patronage refunds from the New Orleans Bank for Cooperatives in the fiscal years ended June 30, 1961, 1962 and 1963, respectively. Also, for the fiscal years ended June 30, 1961, 1962 and 1963, the amounts listed as additional income include the net amounts of the par value of the Class C stock purchased from the New Orleans Bank for Cooperatives by the plaintiff (pursuant to the loan documents which contained the requirements of the regulations and the statute) which are listed in the following chart as charged (and which were charged) to interest expense by the plaintiff in such years, respectively:

FYE 6-30	Portions of Par Value of C Stock Purchased		Charged as Expense	Amounts of Patronage Refunds Reported as Invest- ments (By Decreasing Interest Expense)	Net Amounts Charged to Interest Expense
	Par Value of C Stock Purchased	Reported as In- vestments			
1961.....	\$18,940.09	\$189.00	\$18,751.09	\$287.00	\$18,464.09
1962.....	16,865.75	169.00	16,696.75	275.00	16,421.75
1963.....	19,307.35	193.00	19,114.35	251.00	18,863.35



(b) The effect of including the "Net Amounts Charged to Interest Expense" in the plaintiff's income was to deny to the plaintiff deductions of \$99.00 per share that it claimed with respect to the Class C stock it purchased and to treat such amounts as capital expenditures.

(c) Ninety-nine dollars of the par value of the Class C stock declared to the plaintiff as patronage refunds were not included as income in the plaintiff's federal income tax returns. One dollar per share was carried as a reduction of interest expense and as an asset (investment).

27. At the direction of the Commissioner of Internal Revenue, tax deficiencies were assessed against the plaintiff for each of the fiscal years ended June 30, 1961, 1962 and 1963, in the total amounts of \$126,401.69, \$36,942.49 and \$43,995.40, respectively. The assessments were based upon the taxable income proposed by the Internal Revenue Agent.

28. The tax deficiencies (referred to in paragraph 27) and the interest thereon were duly assessed against and paid by the plaintiff for its fiscal years ended June 30, 1961, 1962 and 1963.

29. On October 13, 1967, the plaintiff timely filed separate claims for refund (Form 843) with the District Director of Internal Revenue for the State of Mississippi for each of its fiscal years ended June 30, 1961, 1962 and 1963, seeking thereby to recover so much of the income tax deficiencies (plus applicable interest) assessed against and paid by it for such years as was attributable to increases in the income reported in its federal income tax returns for the fiscal years ended June 30, 1961, 1962 and 1963 to the extent that such increases resulted from (a) the disallowance of interest deductions claimed with respect to the amounts it paid (pursuant to the loan documents which contain the requirements of the regulations and the statute) for the Class C stock purchased from the New Orleans Bank for Cooperatives and (b) the inclusion in its income of the \$99.00 per share of the par value of the patronage refunds declared to it in the form of Class C stock by the New Orleans Bank for Cooperatives.

30. The claims for refund (referred to in paragraph 29) were disallowed and the plaintiff was notified of such disallowance by certified letters dated December 13, 1967. Thereafter, this action was timely instituted.

31. The following issues are to be litigated at the trial:

(a) Whether for purposes of federal income taxation the plaintiff was entitled to deduct from its gross income (as the plaintiff contends in its complaint) any part (and, if so, the amount) of the par value of the Class C stock it purchased (pursuant to the loan documents which contain the requirements of the regulations and the statute) from the New Orleans Bank for Cooperatives during the fiscal years ending June 30, 1961, 1962 and 1963. See particularly paragraph 8 hereof.

(b) Whether any part (and, if so, the amount) of the par value of the patronage refunds declared to the plaintiff in the form of Class C stock by the New Orleans Bank for Cooperatives in the fiscal years ended June 30, 1961, 1962 and 1963 was includable in the plaintiff's gross income for purposes of federal income taxation. See particularly paragraph 9 hereof.

32. Paragraphs 32 through 53, inclusive (including all exhibits and schedules referred to therein), of the Stipulation As To Facts And Documents filed on even date herewith in the case of *Coastal Chemical Corporation v. United States*, Civil Action No. 1214 (S.D. Miss.) are adopted by reference and are to be considered a part hereof.

Stipulation Exhibit 2  
NEW ORLEANS BANK FOR COOPERATIVES

123

BORROWER

Coastal Chemical Corporation

ADDRESS

P.O. Box 388

Yazoo City, Mississippi

CLASS C STOCK

SURPLUS ALLOCATED TO PATRONS

RESERVE FOR CONTINGENCIES  
ALLOCATED TO PATRONS

DATE	POST REF	EXPLANATION	DEBIT	CREDIT	BALANCE	MEMO YEARLY TOTAL	DEBIT	CREDIT	BALANCE	MEMO YEARLY TOTAL	DEBIT	CREDIT	BALANCE	MEMO YEARLY TOTAL
1957														
Aug 8	CA 455	QUALIFYING SHARE		100.00	100.00									
June 30	SV 7001	INVESTMENT IN C STOCK (INTEREST OVERRIDE)	1178819		115519									
June 30	SV 7012	PATRONAGE REFUND - C STOCK	1434504		2623323	2623323								
June 30	SV 7027	PATRONAGE REFUND - ALLOCATED SURPLUS					678142		678142	678142				
1959														
June 30	SV 7334	INVESTMENT IN C STOCK (INTEREST OVERRIDE)	3395620											
June 30	SV 7342	PATRONAGE REFUND - C STOCK	4736132		10755925	8131752								
June 30	SV 7339	PATRONAGE REFUND - ALLOCATED SURPLUS					2094765		2772907	2094765				
1960														
June 30	SV 7701	INVESTMENT IN C STOCK (INTEREST OVERRIDE)	4711923											
June 30	SV 7708	PATRONAGE REFUND - C STOCK	5165959		20635757	9880882								
June 30	SV 7711	PATRONAGE REFUND - ALLOCATED SURPLUS					2285555		5058462	2285555				
1961														
June 30	SV 5050	INVESTMENT IN C STOCK (INTEREST OVERRIDE)	4171258											
June 30	SV 5057	PATRONAGE REFUND - C STOCK	6054152		30861377	10225440								
June 30	SV 5054	PATRONAGE REFUND - ALLOCATED SURPLUS					2687513		7745975	2687513				
1962														
June 30	SV 5462	INVESTMENT IN C STOCK (INTEREST OVERRIDE)	3507216											
June 30	SV 5470	PATRONAGE REFUND - C STOCK	5230505		39599118	8737721								
June 30	SV 5467	PATRONAGE REFUND - ALLOCATED SURPLUS					2337057		10653062	2337057				

## NEW ORLEANS BANK FOR COOPERATIVES

BORROWER

Coastal Chemical Corporation

ADDRESS

## CLASS C STOCK

## SURPLUS ALLOCATED TO PATRONS

RESERVE FOR CONTINGENCY  
ALLOCATED TO PATRONS

DATE	POST REF.	EXPLANATION	DEBIT	CREDIT	BALANCE	MEMO YEARLY TOTAL	DEBIT	CREDIT	BALANCE	MEMO YEARLY TOTAL	DEBIT	CREDIT	BALANCE
1963					355,951.15				100,230.61				
June 30	1/1/57	INVESTMENT IN C STOCK (INTEREST OVERRIDE)		4215102									
30	1/1/57	PATRONAGE REFUND - C STOCK		6306727	50120949	10521331							
30	1/1/57	PATRONAGE REFUND - ALLOCATED SURPLUS						2691500	12774362	2691500			
1964													
June 30	1/1/57	INVESTMENT IN C STOCK (INTEREST OVERRIDE)		4458555									
30	1/1/57	PATRONAGE REFUND - C STOCK		5657952	60239786	10118537							
30	1/1/57	PATRONAGE REFUND - ALLOCATED SURPLUS						2398497	15173559	2398497			
1965													
June 30	1/1/57	INVESTMENT IN C STOCK (INTEREST OVERRIDE)		5072565									
30	1/1/57	PATRONAGE REFUND - C STOCK		6073138	71385791	11146005							
30	1/1/57	PATRONAGE REFUND - ALLOCATED SURPLUS						2545643	17719002	2545643			
1966													
April 12	1/1/57	Trans to Muscoa	449148		70936643								
June 30	1/1/57	INVESTMENT IN C STOCK (INTEREST OVERRIDE)		7601298									
30	1/1/57	PATRONAGE REFUND - C STOCK		7556526	86074467								
30	1/1/57	PATRONAGE REFUND - ALLOCATED SURPLUS						3133857	20852859				
30	1/1/57	Trans to Muscoa	416085		85678352	14292591	772560		20680299	2961297			
1967													
June 30	1/1/57	INVESTMENT IN C STOCK (INTEREST OVERRIDE)		5831143									
30	1/1/57	PATRONAGE REFUND - C STOCK		5272312	96781837	11103455							
30	1/1/57	PATRONAGE REFUND - ALLOCATED SURPLUS						2137759	22818635				



**Stipulation Exhibit 5-A**

**NEW ORLEANS BANK FOR COOPERATIVES**

**LOAN AGREEMENT**

**Number 2371, December 7, 1961.**

**COASTAL CHEMICAL CORPORATION,  
Yazoo City, Mississippi,  
\$2,750,000.00 Physical Facility Loan**

The findings required by law having been duly made, the New Orleans Bank for Cooperatives agrees to make loans to the above named cooperative association upon the following terms and conditions:

**Amount:** Not to exceed \$2,750,000.00.

**Purposes:** Advances made hereunder shall be used together with \$3,250,000.00 of the association's own capital funds, of which \$2,250,000.00 will be obtained from sales of class D common stock and \$1,000,000.00 from the sale of 20 year 5% convertible debentures to Mississippi Chemical Corporation, to completely finance an expansion program at Pascagoula, Mississippi, which will increase the rated capacity of the anhydrous ammonia plant from 200 tons per day to 500 tons per day. The program has been reviewed and approved by Dr. Arthur G. Keller, Chemical Engineer and Technical Advisor of the bank and will be completed in accordance with plans submitted with the loan application at total estimated cost of \$6,000,000.00.

**Notes and Security:** Advances made hereunder shall be evidenced by promissory note or notes acceptable to the bank and shall be secured by a deed of trust on all facilities, including interest in all land, together with all buildings, machinery, equipment, and improvements located in Jackson County, Mississippi, including the proposed additional ammonia facilities being constructed with the proceeds of this loan, subject only to prior deeds of trust in favor of the bank, securing other loans. In addition, loans shall be secured by a first mortgage on the real estate and improvements recently acquired from Arkansas Plant Food Company located in North Little Rock, Arkansas.



Loans shall also be secured by a chattel mortgage on movable fixed assets, consisting of cranes, payloaders, furniture and fixtures, and trucks owned by the association.

All stock in the bank now owned or hereafter acquired by the association and any interests of the association in and to the allocated contingency reserves and surplus of the bank now or hereafter existing shall be and hereby are pledged to the bank as security for the payment of all indebtedness of the association to the bank now or hereafter existing under this and other loan agreements. In the event that any part of said indebtedness shall be in default at any time, the bank may, at its option, retire and cancel all or part of said stock at the fair book value thereof, not exceeding par, in accordance with regulations of the Farm Credit Administration and may cancel all or part of said interest of the association in the allocated contingency reserves and surplus of the bank, in total or partial liquidation of the debt as the case may be.

*Interest:* Advances made hereunder shall bear interest at the rate prescribed by the bank in accordance with law, payable quarterly on the last day of each calendar quarter during the existence of the loan, provided, however, that if the interest rate charged by the bank on loans similarly classified is changed to a higher or lower rate than the rate effective on the date hereof, the association agrees to pay such higher rate and the bank agrees to accept such lower rate on the unpaid balance hereunder from the effective date of such change of interest rate.

*Repayment:* Advances made hereunder shall be repaid as follows:

On or before June 30, 1964.....	\$350,000.00
On or before June 30, 1965.....	350,000.00
On or before June 30, 1966.....	350,000.00
On or before June 30, 1967.....	350,000.00
On or before June 30, 1968.....	350,000.00
On or before June 30, 1969.....	350,000.00
On or before June 30, 1970.....	350,000.00
On or before June 30, 1971.....	300,000.00
<b>Total.....</b>	<b>2,750,000.00</b>

*Expiration:* Any unadvanced portion of this commitment shall be cancelled on January 1, 1963, provided that the bank may, at its option and without notice, extend said cancellation date for such period or periods of time as the bank shall, in its sole discretion, determine.

**Stock Purchase:** The association shall invest quarterly in class C stock of the bank at its fair book value, not exceeding par, an amount equal to 15 per cent of the amount of interest payable by the association to the bank on said loans for each calendar quarter or part thereof. The association shall pay for said class C stock on the date interest is due and payable, and the bank shall issue said class C stock to the association as of the end of each fiscal year of the bank in the amount of the payments made by the association for said class C stock during said fiscal year.

**Conditions:** While this loan agreement is in effect, the association will abide by the following conditions:

(a) Maintain its status as a cooperative association as defined by the Farm Credit Act of 1935.

(b) Furnish such information as the bank may request relative to its affairs and permit such examination of its books and records as the bank may specify.

(c) Maintain insurance covering such risks, in such companies, form, and amounts; and fidelity bond coverage in such Companies, form, and amounts; and on such officers and employees as the bank may request.

(d) Maintain management and business policies and an accounting system satisfactory to the bank and promptly make such changes therein as the bank may from time to time request in writing.

(e) Make no change in its charter or bylaws, pay no patronage or other dividends or rebates in cash, retire no capital or certificates of indebtedness, borrow no funds from any other source and pledge no assets without the prior written approval of the bank.

**Special Conditions:** Before requesting advances hereunder, the association will:

1. Furnish the bank evidence that it has sold \$2,250,000.00 of class D capital stock to producers.

2—Certify that Mississippi Chemical Corporation has invested \$1,000,000.00 in 20 year 5% convertible debentures issued by Coastal Chemical Corporation.

**Default:** If any representation heretofore or hereafter made by or on behalf of the association to the bank shall prove false, or if the association shall breach any of its obligations or agreements in connection herewith, the bank may decline to make further advances hereunder and may declare all indebt-

edness arising hereunder due and payable and exercise all rights and remedies for the collection thereof.

*Acceptance:* This agreement shall not become effective unless the association shall by December 28, 1961, signify its acceptance of the terms and conditions hereof by signing and returning a copy of this agreement to the bank.

By Direction of the Executive Committee, this the 7th day of December 1961.

NEW ORLEANS BANK FOR COOPERATIVES,

By N. J. PENDLETON,

*President.*

Agreed to and accepted:

COASTAL CHEMICAL CORPORATION,

By O. COOPER, *President.*

Dated: DECEMBER 8, 1961.



## Stipulation Exhibit 7

## NEW ORLEANS BANK FOR COOPERATIVES

FIFTH FARM CREDIT DISTRICT, ALABAMA-MISSISSIPPI-LOUISIANA

P.O. Box 50072

New Orleans, Louisiana 70150, July 15, 1963.

MISSISSIPPI CHEMICAL CORPORATION,

P.O. Box 563,

Yazoo City, Mississippi

*Subject:* Notification of patronage refund for fiscal year  
June 30, 1963, payable in Class C stock.

GENTLEMEN: For the year ended June 30, 1963, the bank's earnings, after provision for franchise tax, dividends on Class B stock, and transfers to allocated surplus, amounted to \$312,759.20. In accordance with our bylaws, these earnings are to be distributed in Class C stock to borrowing associations in proportion to the total gross interest earnings. Since our gross interest for this period amounted to \$1,393,550.74, this patronage refund amounts to 22.44333 per cent of the gross interest.

We accordingly wish to officially notify you that your Class C stock patronage refund for the year ended June 30, 1963, amounts to \$28,888.10, and has been set up on the records of the bank. It is our recommendation that this amount be reflected in your records by a debit to investments in C stock in the bank and a credit to your operating income at face value.

For your general information, we present below a statement of your cooperative's investment in the capital accounts of this bank as of the close of business June 30, 1963, after giving effect to the above Class C stock patronage refund:



	Balance at June 30, 1962	Changes During Year	Balance at June 30, 1963
Class B stock .....	\$150,000.00		\$150,000.00
Class C stock:			
Qualifying share .....	100.00		100.00
From quarterly investment by cooperative associa- tions (15% of interest) .....	81,072.38	\$19,307.35	100,379.73
From earnings distributed as a patronage refund in C stock .....	168,643.11	28,888.10	197,531.21
Total C stock .....	249,815.49	48,195.45	298,010.94

Yours very truly,

D. M. NETTLES,  
*Vice President and Treasurer*

Stipulation Exhibit 8

EXCERPT FROM THE MINUTES OF THE MEETING  
OF THE BOARD OF DIRECTORS OF THE NEW  
ORLEANS BANK FOR COOPERATIVES HELD MAY  
20, 1959

In discussing interest rates Mr. Chavanne mentioned the desirability of having some goal for the rate of class A stock retirement. Each director was handed copy of a schedule (Exhibit 2) showing a proposed program for retirement of class A stock over a period of 20 years. After discussion, motion was made, seconded, and unanimously carried approving this schedule for class A stock retirement as a general objective with the understanding that, under very high interest rate conditions or in the event of some substantial loss on bad loans, the bank would find it necessary to deviate from the scheduled rate of retirement.

I hereby certify that the above is a true and exact excerpt from the minutes of the regular meeting of the Board of Directors of the New Orleans Bank for Cooperatives held on May 20, 1959.

Dated this 3rd day of December, 1965.

C. D. POWELL,  
*Assistant Secretary*

*N.O.B.C. Program of Class A Stock Retirement*

Year Ended	Actual	Goal	
		Retire	Balance
Original A stock			\$7,000,000
6-30-56	\$71,900	\$71,900	6,928,100
6-30-57	181,300	181,300	6,746,800
6-30-58	229,800	229,800	6,517,000
6-30-59		247,000	6,270,000
6-30-60		270,000	6,000,000
6-30-61		275,000	5,725,000
6-30-62		275,000	5,450,000
6-30-63		300,000	5,150,000
6-30-64		300,000	4,850,000
6-30-65		325,000	4,525,000
6-30-66		350,000	4,175,000
6-30-67		375,000	3,800,000
6-30-68		400,000	3,400,000
6-30-69		400,000	3,000,000
6-30-70		400,000	2,600,000
6-30-71		400,000	2,200,000
6-30-72		400,000	1,800,000
6-30-73		400,000	1,400,000
6-30-74		400,000	1,000,000
6-30-75		400,000	600,000
6-30-76 (20 years)		600,000	

## Stipulation Exhibit 9-E

*New Orleans Bank for Cooperatives, Class C Stock and Allocated Surplus  
Applied in Liquidations, January 1, 1956-June 30, 1963*

Date	Association Liquidated	Address	Write-Off	
			C Stock	Allocated Surplus
5-19-60	Blue Lake Gin Company of Itta Bena.	Itta Bena, Miss.	\$2, 596. 49	\$645. 23
6-30-60	Blue Lake Gin Company of Itta Bena.	Itta Bena, Miss.	665. 23	294. 15
Total			3, 261. 72	939. 38
5-19-60	Delta Rice Growers Association, Inc.	Greenville, Miss.	5, 563. 03	2, 188. 43
6-30-60	Delta Rice Growers Association, Inc.	Greenville, Miss.	1, 056. 86	467. 31
Total			6, 619. 89	2, 655. 74
4-14-61	Linwood Elevator	Vaughn, Miss.	802. 30	
4-14-61	Linwood Elevator	Vaughn, Miss.	1, 789. 37	647. 57
6-30-61	Linwood Elevator	Vaughn, Miss.	181. 15	80. 42
7-1-61	Linwood Elevator	Vaughn, Miss.	146. 24	64. 91
Total			2, 919. 06	792. 90
4-8-60	Southern Guernsey Dairies (AAL)	Hernando, Miss.	1, 944. 46	498. 30
6-30-60	Southern Guernsey Dairies (AAL)	Hernando, Miss.	240. 98	106. 55
Total			2, 185. 44	604. 85

NOTE: In each of the above transactions the cooperative went out of business and was liquidated and there was a write-off of the allocated surplus and the "C" stock, thereby reducing the total book value of the "C" stock and allocated surplus upon the balance sheet of the Bank.

In each instance, the properties subject to the security documents were foreclosed and bought by the Bank.

## Stipulation Exhibit 10-C

RESOLUTION OF THE BOARD OF DIRECTORS OF THE NEW ORLEANS  
BANK FOR COOPERATIVES

Be it resolved that no certificates evidencing ownership of Class C stock in the New Orleans Bank for Cooperatives, or evidencing ownership of stock issued as of a date prior to January 1, 1956, shall be issued by the Bank. If any owner of such stock shall so request, the Bank shall furnish at any time a written statement as to the amount of such stock owned by any borrower, as reflected by the books of the Bank.

I hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of Directors of the New Orleans Bank for Cooperatives at its meeting on December 15, 1955.

E. F. CHAVANNE,  
*Secretary*

Approved: December 27, 1955.

HOMER G. SMITH,  
*Director of Cooperative Bank Service*

## Stipulation Exhibit 10-D

RESOLUTION OF THE BOARD OF DIRECTORS OF THE NEW ORLEANS  
BANK FOR COOPERATIVES

In accordance with Article IV, Section 9(b) of the by-laws of the New Orleans Bank for Cooperatives, as amended this date, ownership of Class B stock in said bank shall be evidenced by a certificate in the following form:

Original Date of Issue .....  
Certificate No. ....

NEW ORLEANS BANK FOR COOPERATIVES  
NEW ORLEANS, LOUISIANA

(Incorporated under the Act of Congress known as the Farm  
Credit Act of 1933.)

CLASS B STOCK, SERIES .....

This is to certify that ..... is the owner of  
..... shares of Class B stock, Series ....., of the NEW  
ORLEANS BANK FOR COOPERATIVES, each share hav-  
ing a par value of \$100.

The stock evidenced hereby is issued with the approval of the Farm Credit Administration pursuant to and in accordance with the provisions of section 42(a) (2) of the Farm Credit Act of 1933, as amended by section 101 of the Farm Credit Act of 1955, and is non-voting.

Dividends at a rate of not to exceed four per centum per annum may be paid on the stock evidenced hereby if declared by the Board of Directors of the Bank and approved by the Farm Credit Administration, and if the surplus account of the Bank, after the payment of such dividends, will be not less than 25 per centum of the sum of all outstanding capital stock of the Bank. Dividends shall not be cumulative, but no net savings of the Bank for any fiscal year shall be distributed as patronage refunds unless for that year a dividend at the rate of at least two per centum per annum is declared and paid upon the stock evidenced hereby. Dividends shall be computed in accordance with the bylaws of the Bank in the same manner as interest is computed.

The stock evidenced hereby may be transferred to any person with the approval of the Bank, but no such transfer shall be binding upon the Bank until this certificate is surrendered to the Bank with a duly executed assignment endorsed hereon or accompanying the same. The Bank has a first lien on the shares of stock evidenced by this certificate for all indebtedness of the owner of record to the Bank.

After all class A stock of the Bank has been retired, class B stock may be called for retirement at par, in full or on a pro rata basis, with the approval of the Farm Credit Administration, provided that the oldest outstanding class B stock at any given time shall be retired first, and provided that any holder of class B stock whose stock has been called for retirement may elect, with the approval of the Bank, to leave his stock in the Bank subject to its being included in the next call for retirement.

The order of retirement of the shares of stock evidenced by this certificate shall be determined by the original date of issue specified above.

In case of liquidation or dissolution of the Bank all capital stock of the Bank issued before the effective date of Title I of the Farm Credit Act of 1955, all class A stock, and all class B stock shall be retired at par after the payment of all liabilities of the Bank and prior to the retirement of any class C stock or distribution of surplus or contingency reserves.



Subject to rules prescribed by the Board of Directors of the Bank with the approval of the Farm Credit Administration, the stock evidenced hereby may be converted into class C stock for the purpose of making the investment, if any, required of the holder of record of this certificate by section 42(a) (3) of the Farm Credit Act of 1933, as amended.

The stock evidenced hereby is subject to the provisions of the Farm Credit Act of 1933, and acts amendatory thereof and supplementary thereto, and as they may hereafter be amended.

IN WITNESS WHEREOF, the New Orleans Bank for Cooperatives has caused this certificate to be issued and its corporate seal to be hereto affixed by its duly authorized officers this ..... day of ....., 19.....

.....  
*President*

Attest:

.....  
*Secretary*

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of the New Orleans Bank for Cooperatives at its meeting held on the 15th day of December, 1955.

E. F. CHAVANNE,  
*Secretary*

Approved: December 27, 1955.

HOMER G. SMITH,  
*Director of Cooperative Bank Service*

### Stipulation Exhibit 11

EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD,  
OF DIRECTORS OF THE NEW ORLEANS BANK FOR COOPERATIVES  
HELD NOVEMBER 15, 1961

The board fully discussed regulations issued by the Farm Credit Administration pertaining to the cancellation and retirement of stock and other equities of a borrower in liquidation or dissolution. The consensus was that for the time being the board would prefer to review each individual case before approving the retirement of stock and other equities of any such borrower.

I hereby certify that the above is a true and exact excerpt from the minutes of the regular meeting of the Board of

Directors of the New Orleans Bank for Cooperatives held on November 15, 1961.

Dated this 21st day of December, 1965.

C. A. PONSILL,  
Assistant Secretary

Stipulation Exhibit 12-A, page 3

# BOARD OF DIRECTORS

C. O. STOKES, Chairman  
Ozark, Alabama

*Elected by the production credit associations*

E. P. GARRETT, Vice Chairman  
Decatur, Alabama

*Appointed by the Governor of the  
Farm Credit Administration*

A. B. ADAMS  
Clarksdale, Mississippi  
*Elected by the federal land  
bank associations*

F. A. GRAUGNARD, Jr.  
St. James, Louisiana  
*Appointed by the Governor  
of the Farm Credit  
Administration*

W. W. FUSSELL  
Metairie, Louisiana  
*Elected by the federal  
land bank associations*

A. L. SEVIER  
Tallulah, Louisiana  
*Elected by the production  
credit associations*

E. G. SPIVEY  
Jackson, Mississippi  
*Elected by stockholders of the  
New Orleans Bank for Cooperatives*

J. L. RYAN, General Agent  
Farm Credit Banks of New Orleans

## STAFF

N. F. PENDLETON

President

D. M. NETTLES

Treasurer\*

J. C. BURAS

Assistant Treasurer

L. J. MAUFFRAY

Chief Accountant

F. D. LOGAN

Business Analyst

W. C. VERLANDER, Jr.

Secretary

D. R. STUMP

Assistant to the President  
and Attorney

C. D. POWELL

Assistant Secretary

R. E. KILLEEN

Business Analyst

T. T. HOLMAN

Business Analyst

V. R. MORICI

Business Analyst

\*Effective August 1, 1961.

## Stipulation Exhibit 12-A, pp. 10-11

## NEW ORLEANS BANK FOR COOPERATIVES

## STATEMENT OF CONDITION

JUNE 30, 1961

## ASSETS

Loans:		
Commodity	\$ 700,000.00	
Operating capital	7,215,483.52	
Facility	11,918,763.11	\$20,334,246.63
Total		
Less: Participation of other banks for cooperatives	2,221,722.43	
Reserve	189,591.86	
Net loans	2,410,714.39	
Cash—general funds	17,923,532.24	
U. S. Government securities—at amortized cost (par \$2,335,000.00) investment in Central Bank capital stock	433,812.52	
Accounts receivable	2,599,809.30	
Accrued interest receivable	376,810.09	
Notes receivable	52,293.40	
Assets acquired in liquidation of loans	312,057.18	
Less: Reserve	185,970.77	
Automobiles, furniture, fixtures and equipment	36,800.70	
Less: Reserve	27,000.00	
Prepaid and deferred expenses	25,010.77	
Other assets	25,010.77	
TOTAL ASSETS		None
		12,770.54
		5,040.75
		<u>\$21,923,697.49</u>

Notes:

A. Loans of \$9,621,013.12 are pledged as security for borrowings.

B. The unamortized consolidated debentures represent the bank's participation in consolidated debentures outstanding in the total amount of \$282,000,000 for which the 12 banks for cooperatives are jointly and severally liable.

Loan commitments outstanding

\$13,839,026.89

## LIABILITIES

Unamortized consolidated debentures	\$ 8,000,000.00
Notes payable—Central Bank for Cooperatives	1,500,000.00
Accrued interest payable	61,076.78
Federal franchise tax payable	74,506.49
Dividends payable—Class B stock	12,112.42
Due U. S. Government—Refinancing of Class A stock	350,000.00
Other liabilities	81,849.49
TOTAL LIABILITIES	<u>10,079,545.16</u>

## STOCKHOLDERS EQUITY

Capital stock:	
Class A—U. S. Government	\$4,620,000.00
Class B—cooperative associations	403,747.34
Class C—cooperative associations	1,779,262.16
Surplus—reserves	7,753,008.50
Surplus—allocated to persons	3,627,898.15
TOTAL STOCKHOLDERS' EQUITY	<u>463,454.86</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$21,923,697.49</u>

Total loans since organization

\$543,503,985.22

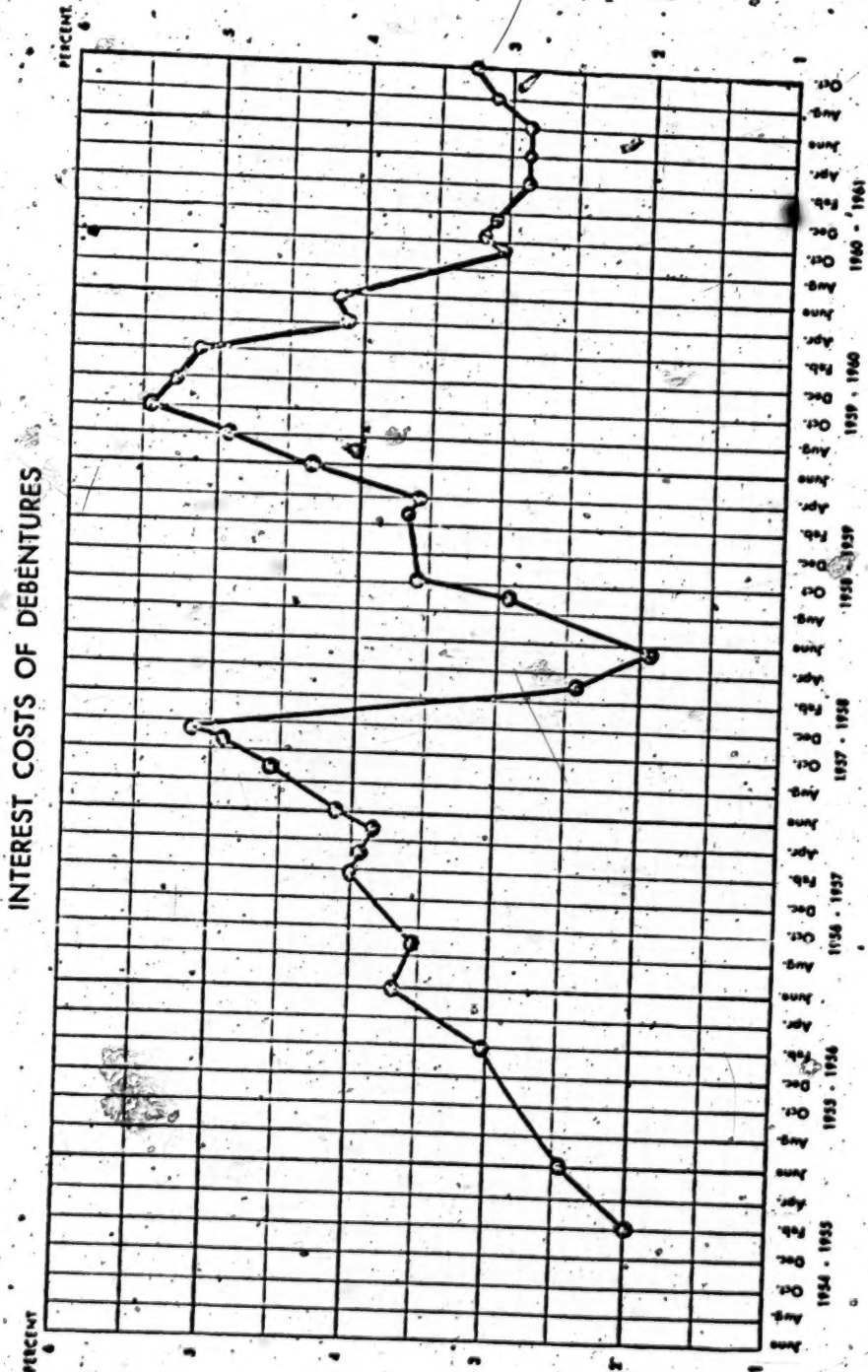
## INTEREST RATES

Interest costs of debentures reached a peak of almost  $5\frac{1}{2}$  per cent in October of 1959 after a sharp rise from less than 2 per cent in June of 1958. From October, 1959 to June of 1961, the rate has declined sharply, with the issue of June 1, 1961 selling at 2.80 per cent. By virtue of this, the bank was able to reduce interest rates from  $5\frac{1}{2}$  per cent on term loans to 5 per cent during the past fiscal year and also reduce operating or seasonal loans from  $5\frac{1}{4}$  per cent to  $4\frac{1}{4}$  per cent. The rates which are currently in effect are, as follows:

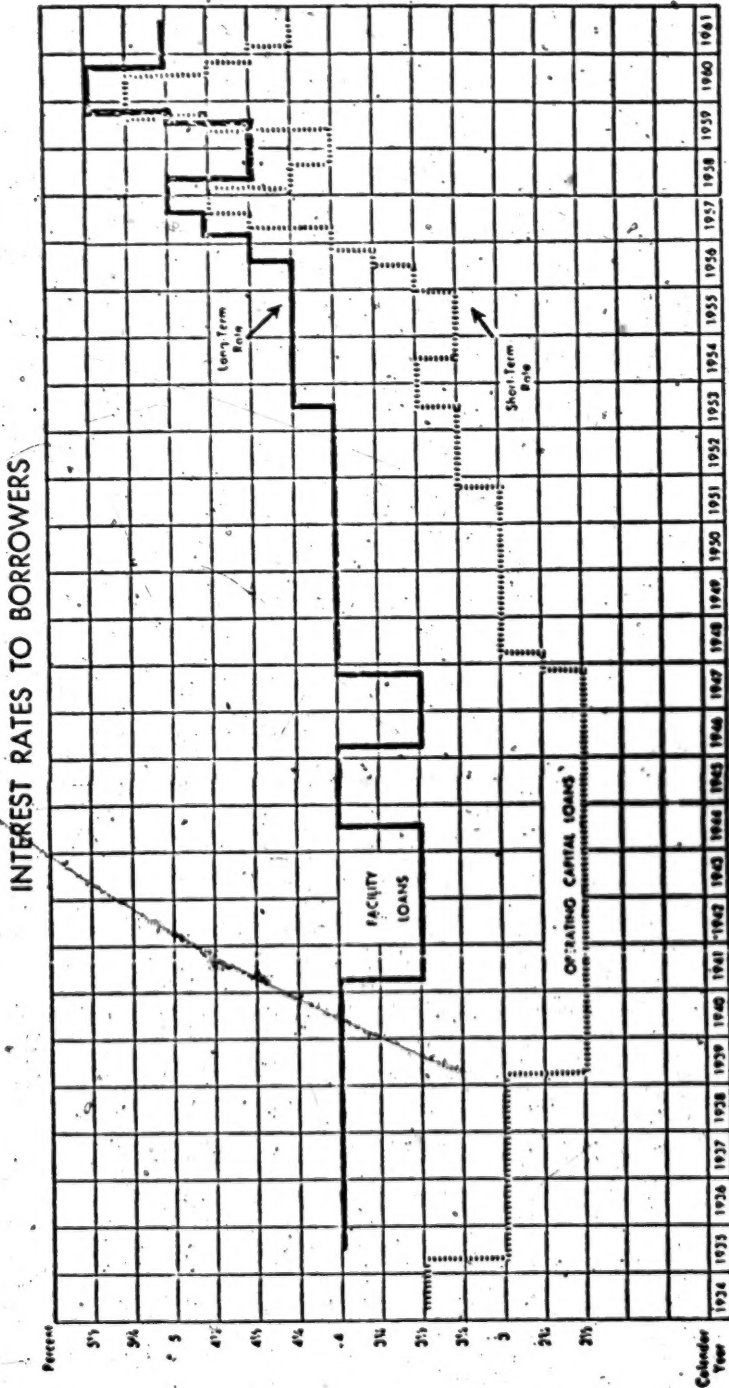
Commodity loans	4 per cent
Seasonal operating loans	$4\frac{1}{4}$ per cent
Facility and term operating loans	5 per cent

As this is written (October, 1961) the cooperative banks have sold two issues of debentures, one each in August and October at rates of 3.05 per cent and 3.25 per cent respectively. Although there is still outstanding one debenture issue which cost 2.80 per cent, it will mature in December, 1961. From all indications, the cost to replace this money will probably be higher than our recent issue at 3.25 per cent. Since the trend appears to be paralleling on a smaller scale, the experience of two years ago, it may be necessary to raise bank rates accordingly. The following graphs reflect the interest rates charged the bank's borrowers and the interest costs of the bank's debentures:





## Stipulation Exhibit 12-A, p. 15



Stipulation Exhibit 12-B, page 3

BOARD OF DIRECTORS

C. O. STOKES, Chairman  
Ozark, Alabama

*Elected by the production credit associations*

E. P. GARRETT, Vice Chairman  
Decatur, Alabama

*Appointed by the Governor of the  
Farm Credit Administration*

A. B. ADAMS  
Clarksdale, Mississippi  
*Elected by the federal  
land bank associations*

W. W. FUSSELL  
Metairie, Louisiana  
*Elected by the federal  
land bank associations*

F. A. GRAUGNARD, Jr.  
St. James, Louisiana  
*Appointed by the  
Governor of the Farm  
Credit Administration*

L. W. WADE\*  
Greenwood, Mississippi  
*Elected by the production  
credit associations*

---

E. G. SPIVEY  
Jackson, Mississippi  
*Elected by stockholders of the  
New Orleans Bank for Cooperatives*

---

J. L. RYAN, General Agent  
Farm Credit Banks of New Orleans

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E. F. STEINER, General Counsel  
Farm Credit Banks of New Orleans

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\*Elected by POAs June 30, 1962, to complete the unexpired term of A. L. Sevier, whose term of office expires December 31, 1963.

## STAFF

N. F. PENDLETON  
President

D. M. NETTLES  
Treasurer

J. C. BURAS  
Assistant Treasurer

L. J. MAUFFRAY  
Chief Accountant

E. D. LOGAN  
Business Analyst

W. C. VERLANDER, Jr.  
Secretary

D. R. STUMP  
Assistant to the President  
and Attorney

C. D. POWELL  
Assistant Secretary

R. E. KILLEEN  
Business Analyst

T. T. HOLMAN  
Business Analyst

V. R. MORICI  
Business Analyst

Stipulation Exhibit 12-B, page 18

## SPECIAL SERVICES TO COOPERATIVE GROUPS

From the commencement of its operation it has been the policy of the bank to aid in the development of sound cooperatives in its district. This program provides not only financial assistance but also constructive service to cooperatives and advice to farmers contemplating the establishment of cooperatives. As a loan service the bank continues to make regular field visits to borrowing cooperatives to the extent possible with available personnel. The use of group cooperative conferences is believed to be valuable in carrying out the objectives and purposes of the cooperative program in this district. During the fiscal year a stockholders' meeting was held in Biloxi, Mississippi.

The annual meeting of sugar cooperatives was held in New Orleans, and the annual meeting of the cooperative rice driers was held in Jennings, Louisiana.

The bank, the other Farm Credit Institutions of the New Orleans area, the three state agricultural colleges, and the three state cooperative councils, comprise the Tri-State Committee on Farmer Cooperative Research and Education. This is an informal organization which meets twice yearly and seeks to coordinate and improve the work in cooperative research and education in the Fifth Farm Credit District.

Conferences were held by members of the bank's staff with groups of farmers contemplating the establishment of new cooperatives. More than half of the associations regularly financed by the bank are the outgrowth of such conferences.

#### DIRECTORATE

The New Orleans Bank for Cooperatives is governed by a board of directors of seven men who are residents of the district and who also serve as directors of the other two farm credit banks of New Orleans. Two of the members of the board are elected by the federal land bank associations in the district, two by the production credit associations, one by stockholders of this bank, and two are currently appointed by the Governor of the Farm Credit Administration. The law provides that the stockholders of the bank for cooperatives shall elect one additional director (now appointed by the Governor) after the capital ownership of the cooperatives reaches a prescribed minimum.

The amended Farm Credit Act of 1953, which put the Farm Credit system on an independent agency status, also established a Farm Credit Board of 13 members who have general policy supervision of the national system. The fifth Farm Credit District representative of that board is J. Pittman Stone of Coffeeville, Mississippi, whose term of office extends to March 31, 1965.

N. F. PENDLETON,  
*President.*



## Stipulation Exhibit 12-C, page 3

## BOARD OF DIRECTORS

W. W. FUSSELL, Chairman  
Metairie, Louisiana

*Elected by the federal land bank associations*

F. A. GRAUGNARD, Jr., Vice Chairman  
St. James, Louisiana

*Appointed by the Governor of the  
Farm Credit Administration*

A. B. ADAMS

Clarksdale, Mississippi

*Elected by the federal  
land bank associations*

C. O. STOKES

Ozark, Alabama

*Elected by the production  
credit associations*

E. P. GARRETT

Decatur, Alabama

*Appointed by the Governor  
of the Farm Credit  
Administration*

L. W. WADE

Greenwood, Mississippi

*Elected by the production  
credit associations*

E. G. SPIVEY

Jackson, Mississippi

*Elected by stockholders of the New Orleans Bank for  
Cooperatives*

---

J. L. RYAN, Chairman, Presidents' Committee  
Farm Credit Banks of New Orleans

E. F. STEINER, General Counsel  
Farm Credit Banks of New Orleans

## STAFF

N. F. PENDLETON  
President

D. M. NETTLES  
Vice President and  
Treasurer

J. C. BURAS  
Assistant Treasurer

L. J. MAUFFRAY  
Chief Accountant

E. D. LOGAN  
Business Analyst

W. C. VERLANDER, Jr.  
Vice President and  
Secretary

D. R. STUMP  
Assistant to the President  
and Attorney

C. D. POWELL  
Assistant Secretary

R. A. MURPHY, Jr.  
Business Analyst

T. T. HOLMAN  
Business Analyst

V. R. MORICI  
Business Analyst

## Stipulation Exhibit 12-C, pp. 10-11

## NEW ORLEANS BANK FOR COOPERATIVES

## STATEMENT OF CONDITION

JUNE 30, 1963

ASSETS		LIABILITIES	
Loans:		Unmatured consolidated debentures	\$10,500,000
Commodity	\$ 1,000,000	Notes payable—Central Bank for Cooperatives	1,450,000
Operating capital	9,701,538	Accrued interest payable	94,646
Facility	17,238,421	Federal franchise tax payable	75,774
	27,939,959	Dividends payable—Class B stock	11,987
Less: Participation of other banks for cooperatives	7,170,320	Due U. S. Government—refinement of class A stock	386,000
Net loans	20,769,639	Trust accounts	60,725
Notes receivable	177,543	Other liabilities	44,043
Accrued interest receivable (net)	384,663	TOTAL LIABILITIES	12,627,125
	21,311,845		
Less: Reserves	312,270		
Net loans, notes and accrued interest receivable	\$20,999,575		
Cash—general funds	616,994	STOCKHOLDERS' EQUITY	
U. S. Government securities at amortized cost (par \$2,935,000)	2,573,944	Capital stock	\$4,890,000
Investment in Central Bank stock	603,862	Class A—U. S. Government	399,562
Equity in allocated surplus of Central Bank	40,940	Class B—Cooperative associations	2,681,548
Accounts receivable		Class C—Cooperative associations	7,961,110
Assets acquired in liquidation of loans		Surplus—reserved	3,627,868
Automobiles, furniture, fixtures and equipment	29,610	Surplus—allocated to persons	711,448
Less: Reserves	29,610	TOTAL STOCKHOLDERS' EQUITY	12,300,446
Prepaid and deferred expenses		TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$24,927,571
Other assets	None		
	14,906		
	7,569		
TOTAL ASSETS	\$24,927,571		

Notes

A. Loans of \$12,332,350 are pledged as security for borrowings.

B. The unmatured consolidated debentures represent this bank's participation in consolidated debentures outstanding in the total amount of \$41,000,000 for which the 13 banks for cooperatives are jointly and severally liable.

Loan commitments outstanding

\$24,927,571

\$24,927,571

Stipulation Exhibit 12-C, page 13

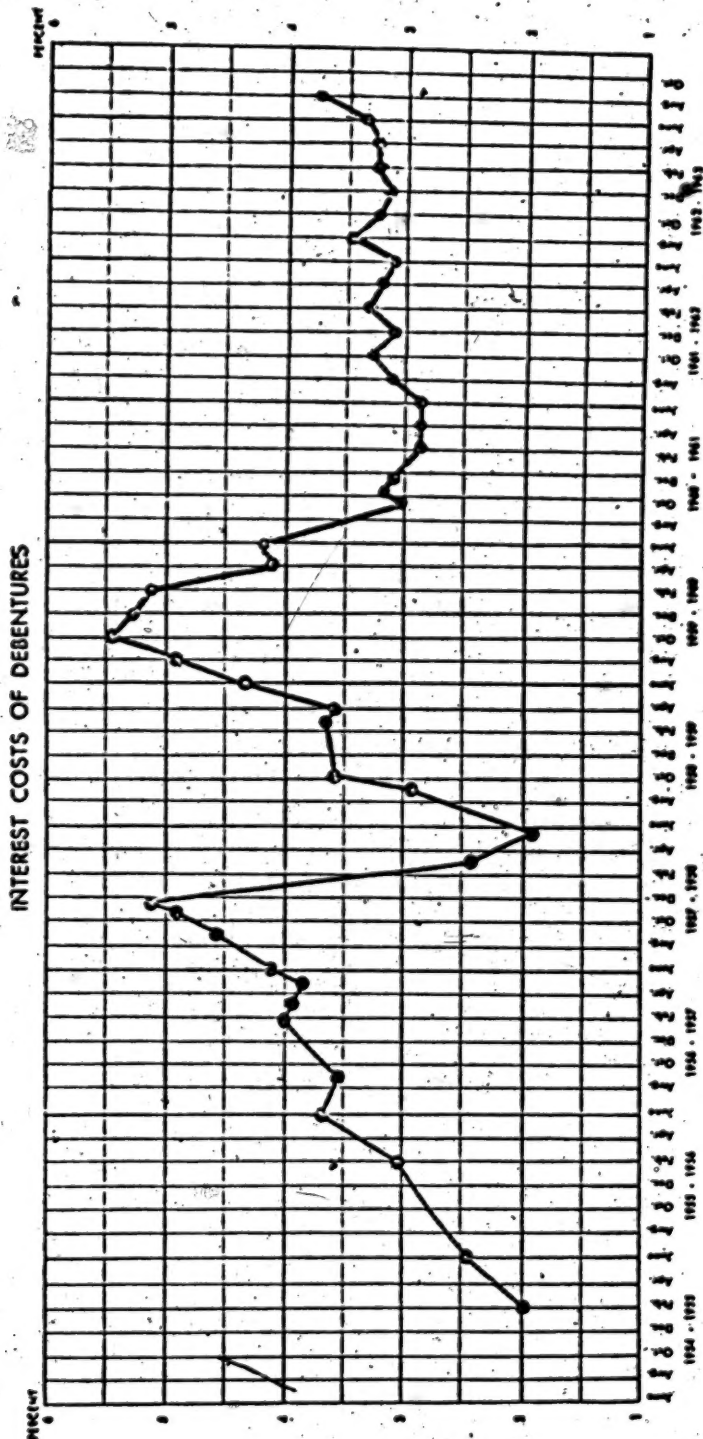
INTEREST RATES

During the past fiscal year (1962-63), debenture costs ranged from a high of 3.475 (including commissions) in August, 1962, to a low of 3.15 in December, 1962. The rate leveled at 3.25 for the February and April sales with the last issue during the fiscal year (June 3, 1963) selling at 3.30. The pattern shows a gradual rise over the past 3 fiscal years. However, as a result of the increase in Federal Reserve discount rate to member banks from 3 per cent to 3½ per cent in July and other factors, the debenture issue of August 1, 1963, showed a sharp increase in rate, selling at 3.725. The October 1 issue further affirmed the higher cost by selling at 3.90 per cent. Because of these increases, the bank's board of directors was compelled to raise interest rates ¼ per cent on all loans effective September 1, 1963. This was the first change since February, 1961.

At this writing, from all indications, the cost of money will remain at a higher level for a period of time.

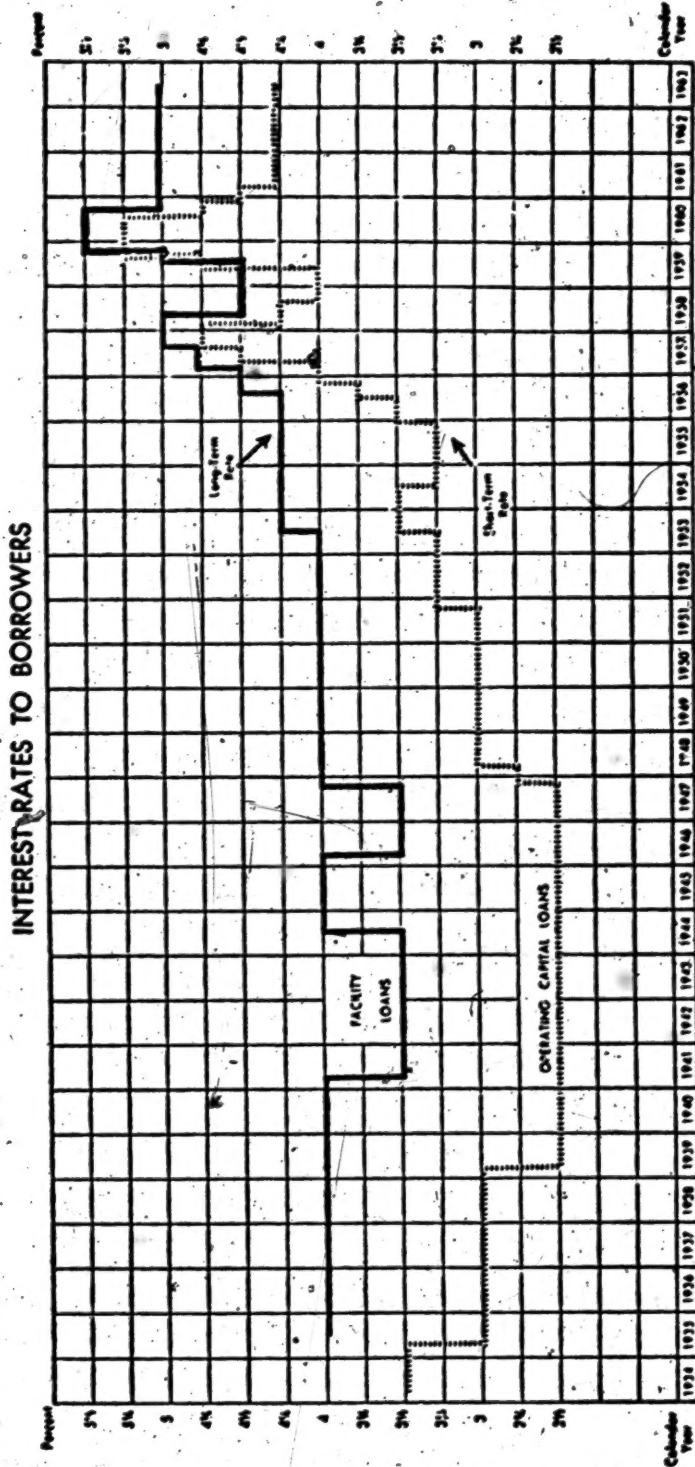
The following graphs reflect the interest rates charged the bank's borrowers and the interest costs of debentures:

## Stipulation Exhibit 12-C, page 14





## Stipulation Exhibit 12-C, page 15



## Stipulation Exhibit 12-C, page 19

## DIRECTORATE

The New Orleans Bank for Cooperatives is governed by a board of directors of seven men who are residents of the district and who also serve as directors of the other two farm credit banks of New Orleans. Two of the members of the board are elected by the federal land bank associations in the district, two by the production credit associations, one by stockholders of this bank, and two are currently appointed by the Governor of the Farm Credit Administration. The law provides that the stockholders of the bank for cooperatives shall elect one additional director (now appointed by the Governor) after the capital ownership of the cooperatives reaches a prescribed minimum.

The amended Farm Credit Act of 1953, which put the Farm Credit system on an independent agency status, also established a Farm Credit Board of 13 members who have general policy supervision of the national system. The Fifth Farm Credit District representative of that board is J. Pittman Stone of Coffeeville, Mississippi, whose term of office extends to March 31, 1965.

N. F. PENDLETON,  
*President*

## Stipulation Exhibit 15

## BYLAWS

## ARTICLE I.—DIRECTORS

*Section 1.*—The duly qualified members of the Farm Credit Board of New Orleans shall constitute ex officio the Board of Directors of the New Orleans Bank for Cooperatives.

*Section 2.*—The business and affairs of the Bank shall be conducted under the supervision and control of its Board of Directors, subject to the applicable provisions of the laws of the United States and to the supervision of the Farm Credit Administration as prescribed therein.

*Section 3.*—There shall be an annual meeting of the Board of Directors on the Wednesday next following the third Monday of January of each and every year at the hour of 10 o'clock A.M., or as soon thereafter as practicable on that day or the

next day; or, if the day prescribed herein be a holiday, at the same hour on the first full business day thereafter, provided that such annual meeting may be held on a different date and time during the month of January of any such year if such date and time shall have been fixed by resolution adopted by the Board of Directors at a regular or special meeting held during the preceding month or earlier, or with the unanimous consent of the Board of Directors.

There shall be a regular meeting of the Board of Directors on the Wednesday next following the third Monday of each and every month at 10 o'clock A.M., or as soon thereafter as practicable on that day or the next day (unless a different date and time for such meeting during any month shall have been fixed by resolution adopted by the Board of Directors at a regular or special meeting held during the preceding month or earlier, or with the unanimous consent of the Board of Directors); or if that day be a holiday, at the same hour on the first full business day thereafter; provided that the regular meeting of the Board of Directors for the month of January shall be held immediately following the annual meeting of the Board of Directors. The Chairman of the Board may call a special meeting at any time, and he shall do so upon written request of any three directors. All meetings of the Board of Directors shall be held at the offices of the Bank unless some other place is fixed by the Board of Directors or is stated in the notice of the meeting. Notice of regular or special meetings of the Board may be given by mail or telegraph. If given by mail, such notice shall be mailed at least five (5) days before the date of meeting. If given by telegraph, such notice shall be dispatched at least two days before the date of the meeting. Notice of any meeting may be dispensed with if each of the directors shall, in writing, waive such notice.

Notice of regular and special meetings of the Board may be given by the General Agent of the Farm Credit District of New Orleans, with like effect as though given by the Secretary of the Bank; and a copy of such notice, together with the written statement of the General Agent that such notice has been given, specifying the manner in which it was given, shall be sufficient evidence to authorize the Secretary to incorporate into the record an appropriate recital with respect to the giving of notice.

The directors shall elect a Chairman who shall preside at all meetings of the Board of Directors. The Chairman need not be a director.

*Section 4.*—A majority of the Board of Directors shall constitute a quorum for the transaction of business, but less than a quorum may adjourn from time to time until a quorum is in attendance.

#### ARTICLE IV.—CAPITAL STOCK

*Section 1.*—Capital stock of the Bank shall consist of class A stock, class B stock, and class C stock, as provided in section 42(a) of the Farm Credit Act of 1933, as amended, all of which shall have a par value of \$100 per share, in addition to stock issued before the effective date of Title I of the Farm Credit Act of 1955 and stock having the same rights and subject to the same limitations which is issued on and after said effective date in accordance with firm loan commitments of the Bank made prior to said effective date. Subsequent reference in these bylaws to stock issued before the effective date of Title I of the Farm Credit Act of 1955 shall be deemed to include stock having the same rights and subject to the same limitations which is issued on and after said effective date in accordance with firm loan commitments of the Bank made prior to said effective date. All stock of the Bank shall be issued, sold, transferred, held, owned and retired in accordance with the applicable provisions of the Farm Credit Act of 1933, as amended, and by the terms and provisions of these bylaws.

*Section 2.*—(a) Class B stock may be issued from time to time in series and amounts authorized by the Board of Directors and approved by the Farm Credit Administration. The resolution of the Board of Directors authorizing the issuance of class B stock shall specify, subject to the approval of the Farm Credit Administration, (1) the total amount authorized to be issued, (2) the maximum rate of dividend which may be paid thereon (not exceeding 4 per centum per annum), (3) the minimum rate of dividend which shall be paid thereon before the Bank may distribute any of its net savings as patronage refunds (at least 2 per centum per annum), and (4) any other terms and conditions not inconsistent with law, including a waiver of the Bank's statutory lien, that the Board of Directors in its discretion may prescribe.

(b) Class C stock, except as authorized by the Board of Directors and approved by the Farm Credit Administration, may be issued only to farmers' cooperative associations as defined in section 15(a) of the Agricultural Marketing Act, as amended.

*Section 3.*—(a) No dividends shall be paid on class A stock or class C stock or on stock issued before the effective date of Title I of the Farm Credit Act of 1955.

(b) Dividends on class B stock which are declared for any fiscal year shall be payable to stockholders of record on the last day of such fiscal year on the class B stock outstanding on the last day of such fiscal year except that in the case of class B stock which has been retired during the fiscal year, dividends shall be payable to the holders of record on the date of such retirement. The dividend payable on each share of stock shall be computed at the dividend rate declared by the Board of Directors for the number of days that such share of stock was outstanding (determined for the first year from the original date of issue shown on the stock certificate) during the fiscal year in the same manner as interest is computed. Such computation shall be on the basis of a fiscal year of 365 days. Dividends payable to any borrower from the Bank whose indebtedness to the Bank is in default may, in the discretion of the Bank, be applied to reduce such indebtedness.

*Section 4.*—Ownership of capital stock shall be recorded on the books of the Bank and shall be evidenced as provided in section 8 of this article. Class B stock may be sold or transferred to any person subject to the approval of the Bank. Class C stock, except as authorized by the Board of Directors and approved by the Farm Credit Administration, may be transferred only to farmers' cooperative associations as defined in section 15(a) of the Agricultural Marketing Act, as amended. No transfer of stock shall be binding upon the Bank until the certificate therefor, if any, is surrendered to the Bank and until a duly executed assignment in form acceptable to the Bank is delivered to the Bank. Any transfer of stock or of any interest therein shall be subject to the lien of the Bank for all indebtedness to the Bank of the owner of record at the time of transfer. The Executive Committee of the Bank may waive the lien of the Bank on any stock held by a borrower to permit its transfer free of the lien if in the judgment of the committee



such waiver will not jeopardize the collectibility of the borrower's indebtedness to the Bank.

*Section 5.*—(a) Class A and class C stock may not be converted to any other class of stock.

(b) Unless otherwise provided by a resolution of the Board of Directors, class B stock may be converted into class C stock by borrowers for the purpose of making the investment in class C stock required under the provisions of section 42(a)(3) of the Farm Credit Act of 1933, as amended. No class B stock shall be converted to class C stock unless the borrower has in writing requested such conversion and has delivered to the Bank the certificate evidencing the stock to be so converted, except that the Board of Directors may permit such conversion where the stock certificate has been lost or destroyed upon compliance with such conditions as the Board of Directors in its discretion may prescribe.

(c) Stock issued before the effective date of Title I of the Farm Credit Act of 1955 may be converted into class B stock or class C stock as agreed upon by the Bank and the holders of such stock in accordance with section 111 of the Farm Credit Act of 1955.

*Section 6.*—(a) Class A stock shall be retired at par, as provided in section 42 (a) (1) of the Farm Credit Act of 1933, as amended.

(b) After all class A stock has been retired, class B stock may be called for retirement at par, in full or on a pro rata basis, with the approval of the Farm Credit Administration, provided that the oldest outstanding class B stock at any given time shall be retired first, and provided that any holder of class B stock whose stock has been called for retirement may elect, with the approval of the Bank, to leave his stock in the Bank subject to its being included in the next call for retirement. The order of retirement of shares of class B stock shall be determined by the original date of issuance shown on the face of each certificate.

(c) After the retirement of all class A stock, class C stock may be retired at par by calling and retiring the oldest outstanding class C stock, in full or on a pro rata basis, but class C stock that was issued for a fiscal year period shall not be called for retirement until all class B stock that was issued during or prior to that fiscal year has been called for retirement.

*Section 7.*—Unless otherwise provided in the stock certificate, the Bank shall have a first lien on all stock in the Bank owned by any borrower as additional collateral for any indebtedness of the borrower to the Bank, except that in respect to any class C stock in the Bank which any cooperative association acquires on account of a direct loan to such association by the Central Bank for Cooperatives, the Bank's lien shall be junior to the lien of the Central Bank thereon.

*Section 8.*—(a) Certificates for class A stock shall be in a form prescribed by the Farm Credit Administration.

(b) Certificates for class B stock shall be in a form prescribed by the Board of Directors subject to the approval of the Farm Credit Administration.

(c) Unless otherwise provided by resolution of the Board of Directors, certificates shall be issued for class C stock and for stock issued before the effective date of Title I of the Farm Credit Act of 1955, but the ownership of any stock for which no certificate has been issued shall be confirmed by the Bank from time to time in accordance with regulations of the Farm Credit Administration and at any time at the request of the holder thereof or his representative. Certificates for any class of stock referred to in this subsection, if issued, shall be in a form prescribed by the Board of Directors subject to the approval of the Farm Credit Administration.

*Section 9.*—At the end of each fiscal year, and at such other times as may be prescribed by the Board of Directors or required by the Farm Credit Administration, the amount of impairment, if any, of the capital stock shall be determined by the Board of Directors.

#### Stipulation Exhibit 18-A

[iii] The fascinating story of the Banks for Cooperatives, to date, is as intriguing to me as the change from oil lamps to electricity on our farms. Tomorrow's farmers and their cooperatives will require an even greater use of capital and credit. These banks, owned by the people they serve, will be one of our most useful tools in building that future.

J. K. STERN,

*President, American Institute of Cooperation.*

\* \* \* \* \*

3 Not all the early history of the banks for cooperatives can be classified as pioneering, of course. Where possible, the banks naturally drew from the experience of others. Although the 13 banks were originally capitalized by the Federal Government, it was never their purpose nor intent, as agents of self-help to farmers, to loan Government money permanently. Instead, when it became feasible (in 1950), the banks tore a leaf from the book of other members of the family that go to make up the cooperative Farm Credit System and began obtaining much of their loanable funds through the sale of debentures (a form of secured bonds) to the investing public.

#### COOPERATIVES AND THEIR BANKS HAVE THRIVED.

5 Cooperatives have another strong incentive to borrow through the 13 banks. It gives them the opportunity to become part-owners in the banks. From the beginning borrowing cooperatives bought stock in the banks. However, it was not until the Farm Credit Act of 1955 that cooperatives really got on the road to eventual complete farmer ownership of the banks.

Naturally, the goal of member cooperatives is complete ownership. In just 4½ years, they have already retired \$32 million of this Government capital. In 1960 alone, \$8 million of the Government capital in the banks was retired. More complete details in the progress of member-ownership of the banks for cooperatives are given in a later chapter.

From hindsight, perhaps the history of the banks for cooperatives seems not so remarkable. But as you read the following chapters and learn more of the banks' origin from the lips of the men who lived it, the significance of the banks' accomplishments will take on new meaning. For those who by their current works are writing the history of cooperatives and figure to play a key role in the cooperatives of tomorrow, the following pages should build confidence. Although most of the problems cooperatives face today are quite different from those in 1933, they are every bit as vital and challenging—be they new methods of processing or marketing; or integration or merger; or whatever else may lie at the bend of the road ahead.

## GOAL OF BANKS TO PROVIDE MORE THAN CREDIT

22 The new banks for cooperatives were not intended to promote cooperatives the way the Farm Board had done. However, from the beginning their goal was to provide counseling service to cooperatives along with sound business-type loans. For example, in his first report on activities of the St. Paul bank in 1934, President Hutzler Metzger, explaining the bank's objectives, said:

"The bank for cooperatives may be regarded as having two major functions: (1) that of distinct services to cooperatives; (2) the banking or credit function. It may be considered primarily as a service institution for the cooperatives of its particular district. Its purpose is to assist in building sound, well-managed, properly financed cooperative associations. Its lending function may be viewed as somewhat secondary in many respects."

## BANKS COUNSELING WITH COOPERATIVES IMPORTANT

28 Many cooperative leaders would agree that the advice and counsel the banks for cooperatives have given individual cooperatives over the years along with their general educational programs have been as important as the actual financing they have furnished. This work has taken many forms and has covered almost every phase of cooperative endeavor. John E. Eidam, president of the Omaha Bank, reports for example:

"The bank for cooperatives, working with the colleges and with agricultural leaders, urged changes in corporate structure, financial policies, operating methods, and other sound practices to assure successful operations and effective services to members. The State of Iowa enacted a law in 1935 which provided for a revolving fund type of operation. This made it easier for creameries to establish retains. It also made it possible for grain elevators to retain net margins and thus build capital. Petroleum purchasing cooperatives and other farm supply cooperatives were able to use this same type of financing in order to build and make progress.

"Partly through the influence of the bank, cooperatives in the other States in the eighth district adopted the revolving

fund plan notwithstanding the fact that the laws were not specifically changed. This resulted in building capital and establishing cooperatives on a much sounder basis."

L. L. Ullyot, currently president of the St. Paul Bank for Cooperatives, reports some of the ways the educational programs tie into the actual lending functions:

"The bank has followed a relatively fast pay-out of the term loans. We believe this has enabled, and in some instances forced, so to speak, a number of borrowers to build net worth at a somewhat faster rate than they might have done under a more lenient repayment policy. Coupled with this the bank has also made it clear to the borrowers that it would give consideration to additional loans if satisfactory progress was being made."

Speaking at the 1959 annual meeting of the National Council of Farmer Cooperatives in, explaining this relationship Fred Merrifield, president of the Wichita Bank, said in part:

"The real reason, of course, for the existence of the banks for cooperatives, along with the other banks of the Farm Credit System is to assist individual farmers to better their position financially on their farms. This is being done by the banks for cooperatives indirectly through the marketing, supply, and service cooperatives owned by these farmers. In other words, our business is to keep the farmers' off-the-farm business with their cooperatives sound in order that cooperatives will assist these individual farmers to succeed in their own individual farm business. We believe it is the duty of the officers and business analysts of the bank for cooperatives to study, not only the operations of the most successful cooperatives, but also those who are having their trials, in order that we may assist all of our stockholders in a constructive way to continue to improve their operations.

#### BANKS MUCH LIKE PARTNERS

"This service must be rendered in a constructive and tactful manner in order that management of our cooperatives would not consider that bank officials are trying to dictate the running of their businesses. In other words, we must keep before our stockholders the fact that the banks for cooperatives are merely partners of the individual farmers in the local cooperatives, or of the local cooperatives in their regionals, from the standpoint of furnishing capital and working with their boards and officers



in promoting their growth and expansion plans. We believe that throughout the Nation, stockholders of the banks for cooperatives are appreciative of the service. We have tried to keep before the farmer-members of our cooperative stockholders the importance of ownership by them through investment in common stock or other permanent capital.

"The Wichita Bank for Cooperatives carries on a continuous educational program, working with the State land-grant colleges and particularly with the State cooperative councils."

The situation in the areas served by the other district banks for cooperatives was much the same. John Eidam, as president of the Omaha bank and long associated with the System in reporting in 1959 recalls:

"In the early 30's, this 4-State area was the home of considerable numbers of cooperative grain and dairy marketing associations. Farm supply cooperatives were as yet largely undeveloped. Not only was this a period when the Nation's economy as a whole, but agriculture in particular, was at a low ebb. The cooperative organizations were for the most part small and financially weak. Under such circumstances, it was inevitable that many of the farmers' elevators and cooperative creameries were engaged in a desperate struggle for existence."

The New Orleans bank (serving cooperatives in Alabama, Louisiana and Mississippi) provides an excellent example of how the bank's counseling has helped farmers organize and develop strong cooperatives to serve them. When the banks were organized, cooperatives in most areas were crying for loans. But in the New Orleans District, the opposite was true—there just weren't many cooperatives.

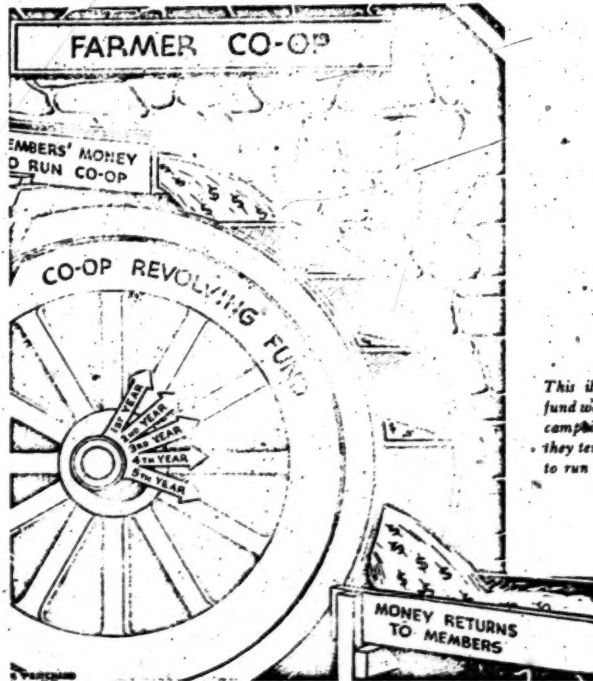
#### HELP FARMERS BUILD NEW CO-OPS

Under the able leadership of H. O. Pate, former president, and President E. F. Chavanne, cooperatives in that District have grown considerably over the years in members and strength. Only 16 of the 137 current borrower-members of the bank were even in existence in 1933 when the bank was organized. The bank has been particularly helpful in assisting farmers develop sugar, rice, cotton and farm supply cooperatives in the three State area. In 1934, thirty-seven associations borrowed just over \$1 million. In 1960, 74 cooperatives borrowed over \$23 million from the New Orleans bank.

The Louisville Bank for Cooperatives provides an illustration of other financial services the banks have performed of benefit to farmers in addition to their regular direct loans to cooperatives. President J. Kenneth Ward points this up in reporting on how the Louisville bank has acted through the years as a servicing agent for Commodity Credit Corporation's tobacco support program:

"Since 1943, the bank has acted as agent for CCC. Under this program, advances are made direct to associations on tobacco going under the support program. The bank is reimbursed for the funds advanced by drawing a draft on CCC. All records, warehouse receipts and other documents are maintained by the bank."

[32]



*This illustration of how a co-op revolving fund works was widely used in the educational campaign to teach farmers how the money they temporarily invested provided the power to run their associations.*

\* \* \* \* \*

## DEVELOPING FARMER OWNERSHIP

41 Complete farmer-ownership and control of the cooperative Farm Credit System was recognized as a goal for all the banks and associations from their very beginning. Congress said as much when it passed the Federal Farm Loan Act of 1916, setting up the 12 Federal land banks and national farm loan associations (now Federal land bank associations). The Act enabled the associations to be completely farmer-owned. It also provided for the Federal land bank associations to use the money farmers invested in their stock to purchase stock in the Federal land banks, and thus gradually replace the Government-owned stock in the banks.

### FARM CREDIT ACTS SET COURSE

The only exceptions to the rule of some farmer-ownership in all parts of the cooperative Farm Credit System in their original authorizing legislation was in the cases of the Federal intermediate credit banks in 1923 and the production credit corporations in 1933. These exceptions were corrected in the Farm Credit Act of 1956 which merged the production credit corporations into the Federal intermediate credit banks, and launched a plan for the merged banks to become owned by the farmer-owned production credit associations.

While Myers was Governor of the Farm Credit Administration (from November 1933 to 1938), he stressed the aim of building a permanent farmer-owned system many times.

### FARMER OWNERSHIP THE GOAL

According to Myers, the goal was that this System should have control as well as ownership by farmers. This farm ownership in the banks for cooperatives, he said, would be through the farmers' ownership of stock in their local marketing, purchasing and farm service cooperatives which, in turn, would own the stock of the banks.

From the beginning in 1933, each borrowing cooperative because of its ownership of capital stock in the bank, had a vote in

electing one director to the Farm Credit district board. The Farm Credit Act of 1933, as mentioned earlier, provided for borrowing cooperatives to buy capital stock in proportion to their loans.

Myers points out that because of the loss experience of the Federal Farm Board (in its price stabilization operations), cooperative leaders intensely distrusted the future soundness of the banks. Thus they did not want to keep funds of their cooperatives invested in the banks' capital stock after they repaid their loans in full. Thus, the law provided that their stock in the banks could be retired when their loans were fully repaid. Most of the cooperatives took advantage of this provision. Thus, the law did not encourage patrons to acquire full ownership of the banks.

#### DEPRESSION POSED PROBLEMS

The first big problem at the time the banks were organized was solving the emergency situation caused by the Depression. This work took the time and energy of those in charge for the first few years. Many of the refinements needed to make the System truly cooperative had to wait until later.

It was not surprising that S. D. Sanders, when he took over as Cooperative Bank Commissioner in 1936, should take a critical look at the way the banks were capitalized. He had long been interested in farmers increasing their ownership of cooperatives by the use of the revolving fund plan of financing. He wondered if this plan also wasn't suitable for financing the banks for cooperatives. Most of the capital in the banks, however, was owned by the Government. The money used for this purpose was that remaining in the Agricultural Marketing Act Revolving Fund of \$500 million from which the Farm Board had made loans to farmers' cooperatives and to stabilization corporations. At its peak between 1945 and 1954 the amount invested in the banks from the Fund was \$178.5 million.

#### EVOLVE PLAN TO RETIRE GOVERNMENT STOCK

Shortly after Mr. Sanders took office, there was a meeting of the presidents of the banks for cooperatives in Washington, D.C. Mr. Sanders was anxious to get the ideas of these officers. He threw out ideas to them and listened to their discussions on all phases of their problems. One spirited discussion came about when he asked the question:



"What would you gentlemen think of the advisability (when conditions are right) of having the law amended whereby the stock would remain in the hands of the borrower and be divided into two series—A and B; the A series being the government stock and the B series the cooperative's stock, with dividends paid on the B stock which would be looked upon as an investment by the cooperative. By paying a reasonable dividend on that stock, we might look forward to the time when the cooperatives own a large percent of all the stock and the Government money gradually would be retired."

Mr. Sanders went on to say that often directors of farmers' cooperatives had asked him why the farmers and cooperatives borrowing from the System didn't elect more of the directors instead of having them appointed by the Governor of the Farm Credit Administration. He reminded them that ownership and control went together and that once farmers and the cooperatives owned the System, or a larger share of the capital stock, they could expect to elect a majority of the directors.

#### REVOLVING FUND PLAN SUGGESTED

E. A. Stokdyk, then president of the Berkeley Bank, asked Mr. Sanders if the class B stock plan he suggested would be put on a revolving fund basis. Mr. Sanders said "Certainly—it is the most equitable way in the world for farmers to finance their own institutions."

Some of the presidents doubted that the plan would work. As one president said, the members of the cooperatives in his district "want all of the control and want everything delivered to them and they give nothing." They had this attitude  
43 toward both their local cooperative and the bank for cooperatives.

To this Mr. Sanders said: "In my way of thinking the philosophy of those men is very unsound all the way through. All interested in the farmers' welfare must recognize that no one on earth is going to change the status of the farmer but the farmer himself, and must realize that the bank for cooperatives is a business institution and requires capital, and furthermore that the capital must be furnished by the farmers (through their cooperatives) if they expect to have control of their credit system. That is just good common sense."

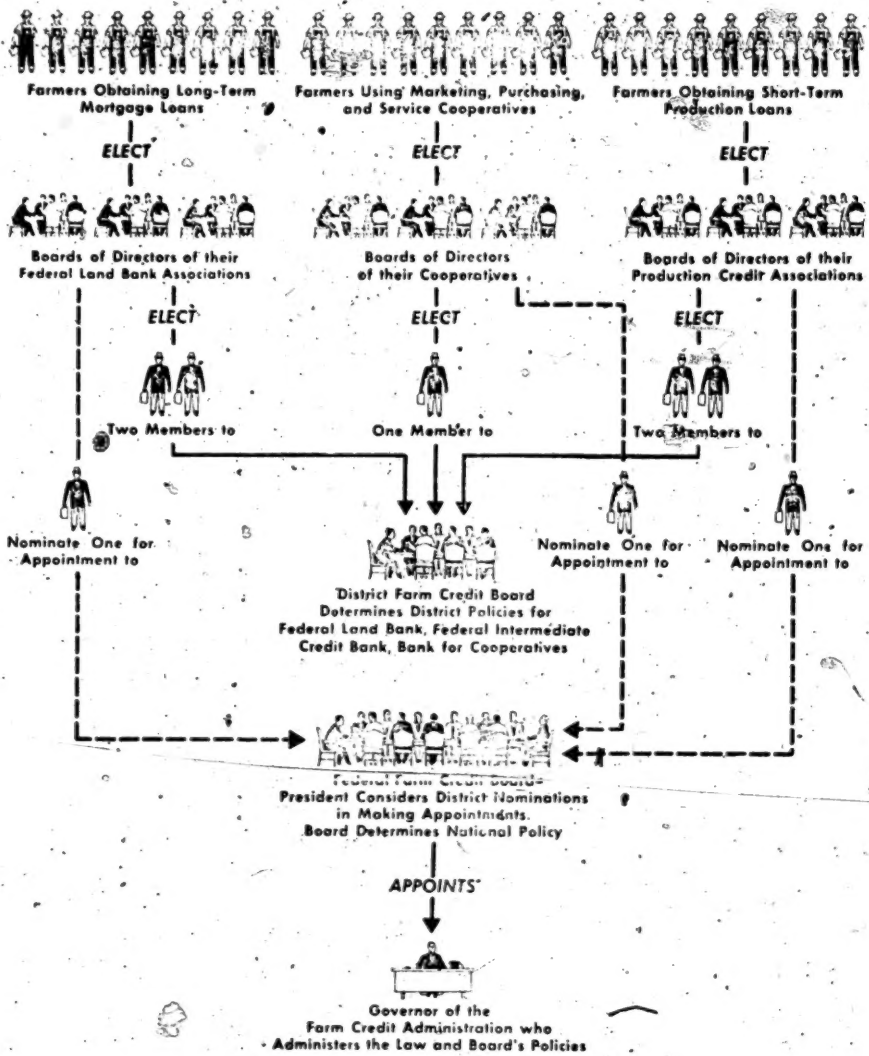
However, the representative of the Houston Bank for Cooperatives, President Sterling Evans, said that associations "that repay their loans are very much inclined to keep their stock in the bank."

The subject was brought up again at the next conference of presidents in December 1936. A tentative draft of a suggested amendment to rearrange the capital structure of the banks for cooperatives was submitted at the meeting. The plan provided for three classes of stock. Class A stock would be owned by the Government. The class B stock bought on account of loans would not be retired when loans were repaid but would be revolved out after 5 years. Class C stock would be, in effect, an allocation of earnings retained to build net worth.

In discussing the suggested amendment, Mr. Sanders said the thought was gradually to retire the Government capital, by replacing it with cooperatives' capital, thereby giving an inducement to the cooperatives to assume their part in building this capital structure.

[44]

## How Farmers in each of 12 Districts Share in Control of Cooperative Farm Credit System



### EMPHASIZE COOPERATION

45 A. S. Goss, then Land Bank Commissioner and later Master of the National Grange, who was at the meeting, said that the whole System must work together toward building up a strictly cooperative farm credit system.

Even at that time, the more progressive farmers' cooperatives were taking an interest in owning the banks. At the annual stockholders' conference of the Louisville Bank for Cooperatives, held on October 26, 1937, a resolution was passed requesting the National Cooperative Council (later the National Council of Farmer Cooperatives) "to study this problem and work out the details of such a plan . . . so that it can be submitted to Congress for action at an early date." This was spearheaded by M. J. Briggs, later general manager of the Indiana Farm Bureau Cooperative Association and at that time a member of the Farm Credit Board of the Louisville district.<sup>1</sup>

### WAR POSTPONES PLANS

The early efforts to change the capital structure of the banks were interrupted by the more urgent needs of building our defense and later by the war. The banks for cooperatives were serving cooperatives adequately at the time and most cooperatives and others saw no reason for making changes.

It was not until plans for the postwar period were underway that changing the capital structure of the banks again received active attention. The banks were being criticized for using Government capital.

Farmers and farmers' cooperatives brought the matter up at meetings of their farm organizations. So urgent was the demand for changes in the entire Farm Credit System that in 1943 the National Grange, American Farm Bureau Federation, and

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<sup>1</sup> Briggs also later served as a member of the Central Bank Board and for several years as chairman of the committee on farm credit legislation of the National Council of Farmer Cooperatives. He has since served as a member, vice chairman, and chairman of the Federal Farm Credit Board created by the Farm Credit Act of 1953.

National Council of Farmer Cooperatives, set up a joint farm credit committee. Mr. Goss, by then Master of the National Grange, headed the committee. This committee worked on developing plans for improving the cooperative aspects of the entire Farm Credit System.

At that same time, Stokdyk worked up a plan for a new capital structure for the banks for cooperatives, based on the Berkeley bank's experience, and sent it to the other presidents. He suggested that they work up similar plans.

At the meeting of the presidents in February 1944, Stokdyk asked that a study be made of capital that the banks would have accumulated since organization under various alternative plans. This study was later made.

A committee of bank for cooperatives presidents consisting of Stokdyk as chairman, H. O. Pate (New Orleans); and Hutzler Metzger, (St. Paul) was appointed by Sanders to develop practical suggestions on the capital structure of the banks. It held its first meeting in Kansas City on February 2 and 3, 1945. At that meeting the tentative plans suggested for the capitalization of the banks were discussed. They later became the basis for proposals which ultimately resulted in the Farm Credit Act of 1955.

#### STUDY CAPITAL REQUIREMENTS

A real step forward was taken at the conference of banks for cooperatives' presidents held in August 1947. This meeting was taken up mostly with discussions of the capital requirements of the banks.

The current capital committee of D. M. Hardy (St. Louis); Pate, and Metzger, presented a report which included

- 46 specific recommendations.

Almost an entire day was taken to examine the views and counsel of leaders of cooperatives and general farm organizations on the problem of gradually converting the banks for cooperatives into truly cooperative institutions.

#### SEEK VIEWS OF FARM ORGANIZATIONS

Goss, as Master of the National Grange, gave his views on various phases of the capitalization plans under review. Others who made suggestions and comments were: Charles H. Holman, Executive Secretary, National Cooperative Milk Pro-



ducers Federation; H. Willis Tobler, Assistant to the Director, American Farm Bureau Federation; John J. Riggle, Director of Cooperative Services, National Council of Farmer Cooperatives; John Brandt, President, National Milk Producers Federation and Land O'Lakes Creameries, Inc.; F. V. Heinkel, President, Missouri Farmers Association; Roy F. Hendrickson, Washington representative, National Federation of Grain Cooperatives; and W. G. Wysor, General Manager, Southern States Cooperatives, Inc.

These farm leaders were definitely in favor of the immediate development of a comprehensive plan for increasing farmer cooperative ownership of the banks for cooperatives. They were willing to accept the responsibility of selling the program to farmers and farm groups and to sponsor any legislation needed.

A committee of three presidents of banks for cooperatives, Hutzler Metzger, A. C. Adams (Spokane) and Lindsay Crawford (Berkeley) was appointed to stay after the conference to work on a tentative plan.

In February 1948, hearings were held by the House Committee on Agriculture on a bill to provide for the retirement of the Government capital in the banks for cooperatives. This bill had been drafted by a committee representing the American Farm Bureau Federation, the National Grange, the National Cooperative Milk Producers Federation, the National Federation of Grain Cooperatives, and the National Council of Farmer Cooperatives.

Congressman Clifford R. Hope introduced the bill in the House on April 21, 1948, and on May 29, the House Committee on Agriculture reported it with "a recommendation that it do pass." A companion bill was introduced in the Senate by Senators Arthur Capper and George D. Aiken. Hearings were held. In addition to the farm organizations which had drafted the original House bill, the National Farmers Union and several additional cooperative organizations gave testimony in favor of the Senate bill.

Again at the next session of Congress on January 5, 1949, Congressman Hope introduced a bill very similar to that considered in the previous Congress. Hearings were held and the bill was passed by the House. It was then referred to the Senate but no action was taken during that session.

M. J. Briggs, Chairman of the Agricultural Credit Committee of the National Council of Farmer Cooperatives in his 1951 report said: "The national farm and cooperative organizations decided that it (was) preferable that more general farm credit legislation precede the Banks for Cooperatives Bill. . . ."

#### PASS FARM CREDIT ACT OF 1953

The more general farm credit legislation referred to was enacted as the Farm Credit Act of 1953. The Act stated: "It is declared to be the policy of the Congress to encourage and facilitate increased borrower participation in the management, control, and ultimate ownership of the permanent system of agricultural credit made available through institutions operating under the supervision of the Farm Credit Administration, and the provisions of this Act shall be construed in keeping with this policy."

The Act made several important changes chief of which were:

47. It established the Farm Credit Administration, which had operated from 1939 to 1953 as a part of the U.S. Department of Agriculture, as an independent agency of the executive branch of the Government.

#### FEDERAL FARM CREDIT BOARD CREATED

A 13-member part-time policy-making Federal Farm Credit Board was created to exercise general direction and supervision over the performance of all functions, powers, and duties vested in the Governor when relating to matters of a broad and general supervisory, advisory, or policy nature. Twelve of the members of the Board are appointed by the President of the United States subject to confirmation by the Senate for 6-year terms. Members who have served a full 6-year term are not eligible for reappointment. The 13th member of the Board is appointed by the Secretary of Agriculture as his representative to serve at his pleasure.

In making his appointments, the Act directs the President to give consideration to the three nominees designated by the production credit associations, the Federal land bank associations, and farmers' cooperatives borrowing from the bank for cooperatives in each Farm Credit district, respectively.

## BOARD IS BIPARTISAN

The sponsors of the legislation wanted to confine the President's appointments to one of the three nominees in each district. However, constitutional lawyers felt the President could not be limited to that extent. Congressman Harold Cooley, in agreeing to the change, said he did so because he had such confidence that the incumbent of the White House would carry out the original intent of Congress. Up to this time (June 1960), the President has limited his appointment of all Board members to these nominees. Thus, the farmer-members  
48 who own and use the System have, since 1953, had a voice in making policies at the national level.

The Federal Farm Credit Board selects the Governor of the Farm Credit Administration as its administrator to carry out its policies and the duties prescribed by law. As long as there is any Government capital in the system the President of the United States must approve the appointment.

This act abolished the offices of Commissioners—Cooperative Bank Commissioner, Production Credit Commissioner, Land Bank Commissioner, and Intermediate Credit Commissioner—which were appointments made by the President and confirmed by the Senate. Subsequently the duties of these Commissioners were assigned to a director of each of three credit services appointed by the Governor. These directors of Cooperative Bank Service, Short-Term Credit Service, and Land Bank Service, are also designated as deputy governors.

The act also required the Federal Board to make recommendations to Congress on means for eventually retiring the remaining Government capital in the Farm Credit System.

## PASS FARM CREDIT ACT OF 1955

The Farm Credit Act of 1955 provided a comprehensive plan for the cooperatives using the services of the banks to build up their investment in these banks and for the gradual retirement of the Government-owned capital. The act provided for three classes of capital stock—A, B, and C. Existing Government-owned stock was transferred to class A. Cooperatives and others can invest in class B stock, on which dividends of 2 to 4 percent are paid. Cooperatives buy class C stock in connection with their loans and receive patronage refunds in class C

stock from the bank's savings in proportion to the interest they have paid during the year.

Upon retirement of all Government capital, except for any class B stock held by others, the Central Bank for Cooperatives will be owned by the district banks for cooperatives and the district banks will be owned by the cooperatives that use the banks.

#### MOVING TOWARD FARMER OWNERSHIP

Under the Act, complete ownership by the cooperatives will be accomplished by retiring Government-owned (class A) stock in each bank annually in an amount substantially equivalent to the class C capital stock acquired by borrowers during the year.

Borrowers acquire class C capital stock: (1) by purchasing at least one qualifying (voting) share; (2) by investing regularly in such stock a certain required percentage (from 10 to 25 percent) of the amount of interest they pay on their loans from the bank (10 banks are requiring 15 percent, and 3 banks 20 percent); and (3) through patronage refunds paid in the form of such stock from part of the banks' annual net savings, and by distribution of surplus previously allocated to borrowers upon a patronage basis.

Class B and C stock can be revolved by paying off the oldest outstanding shares after all Government stock has been retired, but class C stock issued for a fiscal year period may not be retired until all class B stock issued during or prior to that fiscal year has been called for retirement.

Because of the provision in the original Act that upon repayment of the loans, borrowers had the right to have their stock retired and receive the proceeds either in cash or applied as the final payments of their loans, only \$20.6 million of capital stock was owned by cooperatives on December 31, 1955. And even this could not be regarded as permanent borrower capital.

The Farm Credit Act of 1955 (which went into effect January 1, 1956) provided an opportunity for the then current stockholders to convert their stock to new class B and class C stock and to convert their existing loans to conform to the provisions of the Act. Thus they would agree to make regular purchases of class C stock based on the amount of their interest payments. Cooperatives responded exceed-



ingly well to this responsibility. Eighty-three percent of the cooperatives voluntarily converted their existing loans to the new basis. Over 90 percent of the old stock owned by cooperatives on the effective date of the Act was voluntarily exchanged for new class B or C stock. The cooperatives could have requested payment for the old stock when they paid off their loans.

The Farm Credit Act of 1955 also provided for certain changes in the Central Bank for Cooperatives.

#### CONSIDERABLE PROGRESS MADE

Cooperatives have made excellent progress toward complete member ownership of their banks in the 4½ years they have been operating under the 1955 Act. Ownership of capital stock, in the banks by cooperatives, has increased from \$20.6 million to \$45.9 million on June 30, 1960. In addition, surpluses of \$10.1 million have been accumulated and allocated to patrons. Of the total capital stock cooperatives have invested in the banks, \$14.9 million was purchased as class C stock; \$16.7 million was acquired as patronage refunds in class C stock; \$14.0 million was class B stock voluntarily invested; and \$253,000 was capital stock acquired before the Farm Credit Act of 1955 which was not converted to the new stock. The banks paid \$445,548 in dividends on class B stock during the fiscal year ended June 30, 1960.

Prior to this act, six of the seven directors of the Central Bank for Cooperatives were appointed by the Governor of the Farm Credit Administration, three from among nominees of the borrowing cooperatives. The seventh member and chairman of the board was the Director of Cooperative Bank Service (previous to 1953 Cooperative Bank Commissioner) who also served as chief executive officer of the bank. Under the 1955 Act no officer or employee of the Farm Credit Administration may serve as chief executive officer or as a director of the bank.

Beginning January 1, 1957, the Governor appointed only four of the seven directors of the bank, and three are elected by farmer cooperatives and district banks for cooperatives. Three of the appointed directors were subject to being succeeded by elected directors when the total of patrons



investment in stock and the reserves and surplus of the bank, was equal to two-thirds of the bank's net worth.

An amendment in 1960 increased the board of directors to 13. Starting January 1, 1961, one will always be appointed by the Governor of the Farm Credit Administration. Eventually each district bank will elect a director. However, until the banks meet the stock ownership requirement mentioned in the preceding paragraph, only six district banks will elect directors and the other six directors will be appointed by the Governor. The district banks will alternate in electing directors until that condition is met.

As now constituted the Central Bank's board of directors functions in the same manner as a district bank's board in determining policies and electing the bank's officers.

The 1953 Act had already broadened farmer control at the district level by giving farmer-members, through the boards of directors they choose to run their credit and other cooperatives, the authority to elect a larger number of members of the district Farm Credit boards.

#### ELECT ALL BUT TWO BOARD MEMBERS

Formerly, three members of each district board of seven members had been elected—one each by national farm loan associations, production credit associations, and borrowers from the banks for cooperatives. The Governor of the Farm Credit Administration appointed the other four members, one of whom had to be appointed from a list of three nominees of the national farm loan associations of the district.

Under the Farm Credit Act of 1953, production credit associations and Federal land bank associations in each district, each elect two members of the district Farm Credit Board, as they meet the requirements of farmer-ownership set out in the Act. Cooperatives using the bank for cooperatives currently elect one member but may elect a second member when they meet similar requirements of investment in the ownership of their respective bank for cooperatives. The requirements are the same as those for the Central Bank mentioned previously.

The other two members of each district board—eventually only one—continue to be appointed by the Governor of the Farm Credit Administration with the advice and consent of the Federal Farm Credit Board.

### LOOK TO THE FUTURE

There is still considerable distance for the cooperatives to travel. However, they have been making splendid progress toward the goal of complete farmer-ownership of the banks for cooperatives since the passage of the 1955 Act. They are confident they can complete the job within a reasonable time.

Passage of the 1955 Act proved to be a great morale booster for those associated with the banks. President Homer G. Smith, Central Bank for Cooperatives, mentions this in a letter of January 19, 1960:

"Since enactment of the legislation, the banks are operating in a new atmosphere and as new organizations. This can be observed by attending stockholders' meetings of the banks across the Nation. At these meetings there is emphasis on the future of the banks as farmer cooperatives; how they can better serve farmers; and how they are progressing toward complete farmer ownership."

The 1955 Act set up some goals for the banks to shoot at and, as their experience so far has shown, these goals are attainable.

### SOURCE OF FUNDS

51 When the banks for cooperatives were established in 1933 and 1934 at the depths of a depression, it was highly important that they should start operating as soon as possible. The banks needed two things: underlying capital and loan funds.

In the case of the other parts of the cooperative Farm Credit System, Congress had provided original underlying capital in the form of Government-owned stock. Congress had also made it possible for the users of these banks and associations, except in the case of the Federal intermediate credit banks, to buy stock in connection with their loans, plus providing a means

of going to the investment markets for loanable funds. Congress followed this same pattern in enacting legislation for the banks for cooperatives.

### EXPAND CAPITAL STOCK

The Government funds to purchase capital stock in the banks for cooperatives came from the Agricultural Marketing Act Revolving Fund which had been used by the Federal Farm Board in making loans to farmers' cooperatives and for stabilization purposes, as explained in detail in earlier chapters. The original stock provided was \$110 million.

As the banks grew in size and the cash available in the Revolving Fund increased, the Governor of the Farm Credit Administration subscribed and paid for additional amounts of capital stock. The peak investment was \$178.5 million, as shown in the table below.

*Capital Stock of Banks for Cooperatives*

June 30	Government capital stock (millions)	Farmer-owned stock (millions)
1935	\$125	\$1.4
1940	149.0	3.4
1945	178.5	5.5
1950	178.5	14.1
1955	150	18.3
1960	118.3	45.9

At first the banks had sufficient capital to make loans without borrowing additional funds. From the beginning the banks for cooperatives could discount short-term loans with the Federal intermediate credit banks. As mentioned on page 25, this means of financing was widely used for commodity loans during some of the early years. However, throughout most of their history, the banks have borrowed from commercial banks to obtain funds to supplement their capital which includes Government-owned stock and capital stock supplied and owned by cooperatives and their surplus and reserves. Many of the Nation's largest commercial banks have been extremely helpful in this regard.

## Stipulation Exhibit 18-B, page 7

## MANY SERVICES

The principal function of a Bank for Cooperatives is to make available a lending service geared to the needs of farmer cooperatives. However, closely allied to this is a secondary objective—that of rendering a general business service to borrowers.

For the most part, the business services rendered are of an advisory and counseling nature. Because the Bank specializes in the field of financing farmer cooperatives, the general experience gained from such specialization is often useful to individual cooperatives.

Within the limitations of its staff, a Bank will work with any farmer cooperative in the district, whether a stockholder or not, when requested to do so. Examples of the areas in which an advisory service might be performed would include budgeting, long range financial planning, operating trend analysis, credit policies, and auditing standards. In regard to services which involve legal matters, the Bank's attorney may, if requested, work in an advisory capacity with counsel for the cooperative.

It is a function of the Bank to be genuinely and sympathetically interested in the formation of sound, well-organized cooperatives wherever the need exists and farmers can be better served.

Similarly, the Banks stand ready to consult with borrowers on the advantages of mergers and consolidations and other matters of concern to the borrower's future operations. They also participate in various training programs for directors, managers and for other cooperative personnel. In short, the Banks for Cooperatives provide farmer cooperatives a complete and specialized credit service which gives the money they lend extra value.

10

## ORGANIZATION OF THE BANKS

As mentioned earlier, the Banks for Cooperatives are a part of the farmer-owned cooperative Farm Credit System. Located at the same point in each of the 12 Farm Credit Districts are a Federal Land Bank and Federal Intermediate Credit Bank, as well as a Bank for Cooperatives.

The cooperatives owning stock in a district Bank elect two of the seven members of the district Farm Credit Board which serves as a board of directors for all three Farm Credit Banks in the district. The Production Credit Associations elect two members and the Federal Land Bank Associations elect two members to each district board. The seventh member is appointed by the Governor of the Farm Credit Administration, with the advice and consent of the Federal Farm Credit Board.

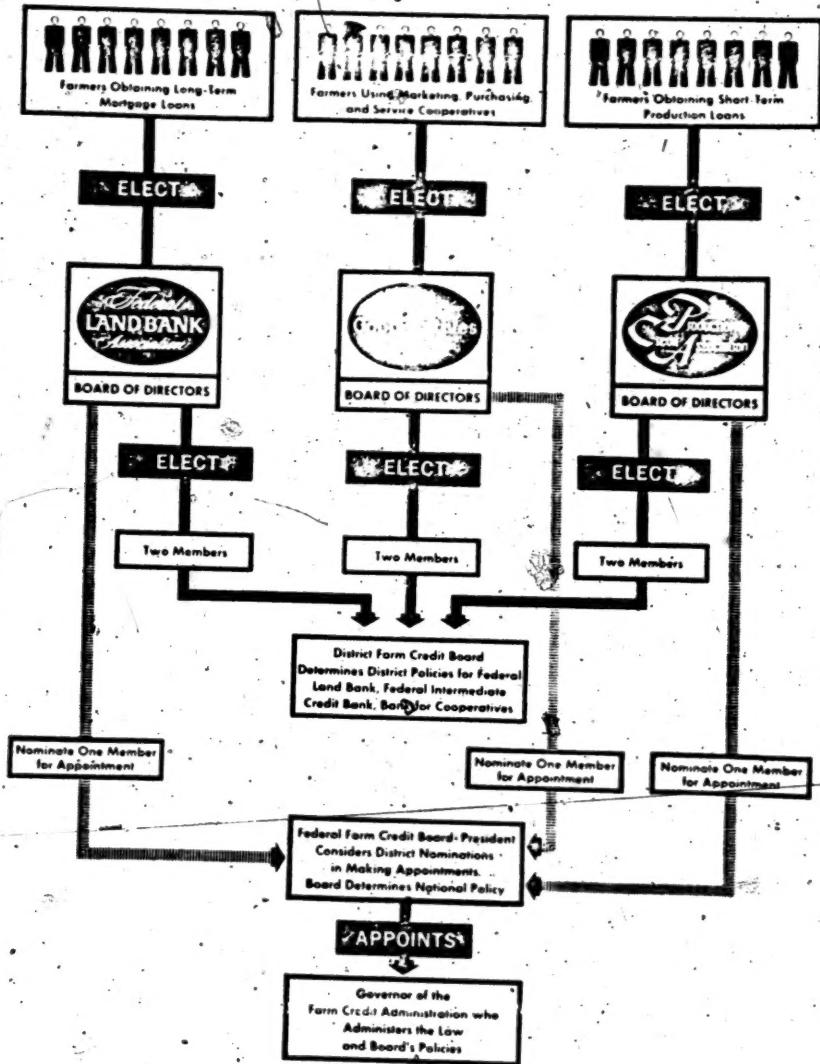
The board of directors of the Central Bank for Cooperatives consists of 13 members, one from each of the 12 Farm Credit Districts and a director-at-large. The board of directors of each district Bank for Cooperatives elects a member of the board of directors of the Central Bank. The director-at-large is appointed by the Governor of the Farm Credit Administration, with the advice and consent of the Federal Farm Credit Board.

\* \* \*



[11]

# How Farmers Share in Control of Cooperative Farm Credit System



Just as commercial banks have Governmental supervision, so do the Banks for Cooperatives. The Farm Credit Administration, an independent agency of the Federal Government, coordinates and supervises the banks and associations of the Farm Credit System:

Although a Government agency, all expenses of the Farm Credit Administration are assessed against the various banks and associations that make up the cooperative Farm Credit System.

Farmers and their cooperatives also have a voice in the control of the Farm Credit Administration. A 13-member,

12      part-time Federal Farm Credit Board sets the policies under which the Farm Credit Administration operates, and also appoints the agency's executive officer—its Governor. Twelve members of the board—one from each district—are appointed to 6-year terms by the President of the United States. However, in making the appointments from each district, the President considers persons who are nominated by the Production Credit Associations, Federal Land Bank Associations and by cooperatives which use the Banks for Cooperatives. The thirteenth member of the board is appointed by the Secretary of Agriculture as his representative. Thus, in Banks for Cooperatives, and in the entire Farm Credit System, the emphasis is on a democratic, cooperative organization. The System is in business to assist farmers financially and is designed to assure this objective:

13      In the ebb and flow of agricultural revolution, predictions of any sort not only are risky, but more than a little complicated. As a case in point, one cannot speculate on the future of the Banks for Cooperatives without first considering the prospects of the farmer cooperatives they serve. Nor, for that matter, can one ignore the prospects of the ultimate gainer or loser in all of this—the American farmer.

## Exhibit 19-H

## III

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## FARM CREDIT ADMINISTRATION

## FEDERAL FARM CREDIT BOARD

V.

JULIAN B. THAYER,  
*Middlefield, Conn.*  
 WILLIAM T. STEELE, Jr.,  
*Richmond, Va.*  
 MARSHALL H. EDWARDS,  
*Bartow, Fla.*  
 MARVIN J. BRIGGS,  
*Indianapolis, Ind.*  
 J. PITTMAN STONE,  
*Coffeeville, Miss.*  
 L. C. CARTER,  
*Stuttgart, Ark.*

JOE B. ZEUG,  
*Walnut Grove, Minn.*  
 J. B. FULLER,  
*Torrington, Wyo.*  
 GEORGE W. LIGHTBURN,  
*Capron, Okla.*  
 FRANK STUBBS,  
*Corpus Christi, Tex.*  
 GLEN R. HARRIS,  
*Richvale, Calif.*  
 ROBERT T. LISTER,  
*Prineville, Oreg.*

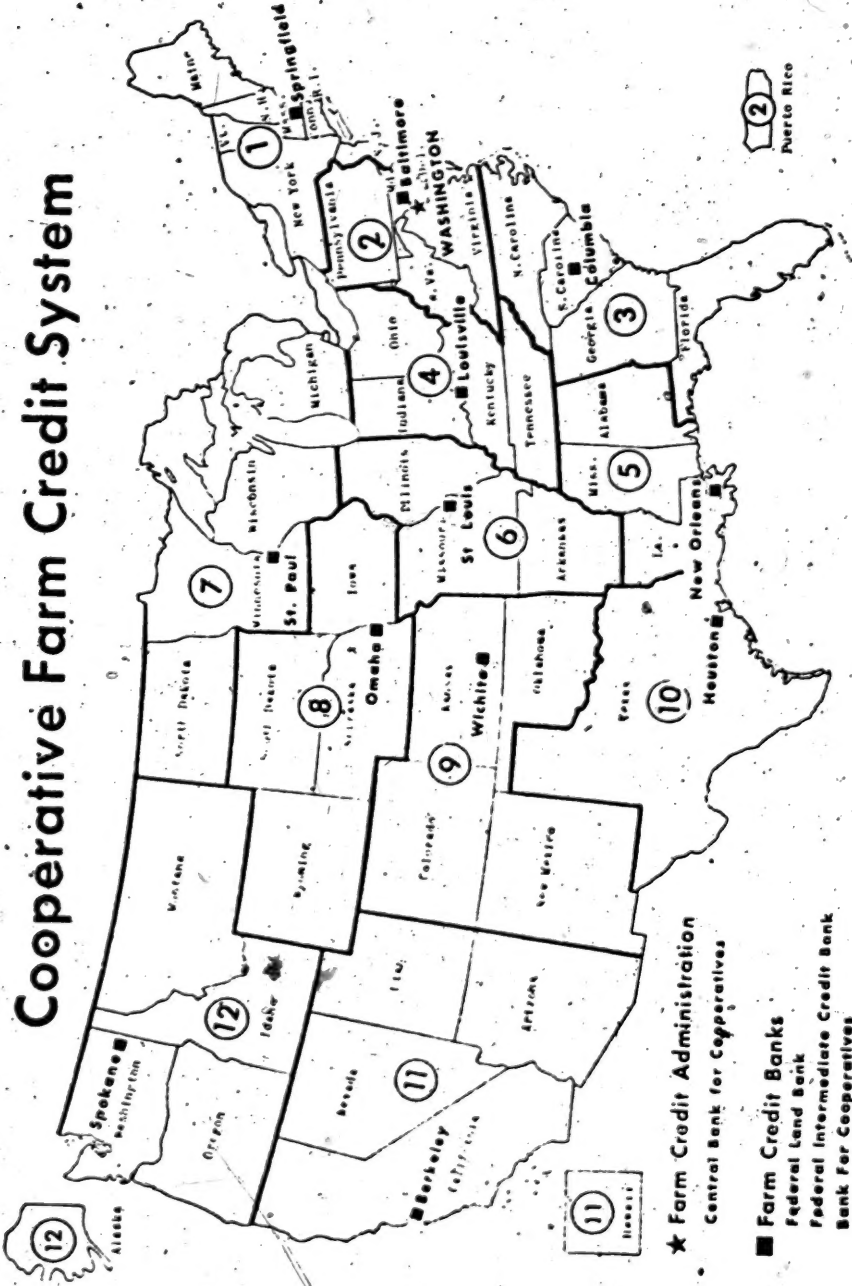
MURRAY D. LINCOLN, *Columbus, Ohio*  
 Officers

FRANK STUBBS—*Chairman*  
 J. PITTMAN STONE—*Vice Chairman*  
 J. MAHLON SELBY—*Secretary*

Administrator

ROBERT B. TOOTELL, *Governor*.

# Cooperative Farm Credit System





## 30th Annual Report of the

## FARM CREDIT ADMINISTRATION

The banks and association of the cooperative Farm Credit System this year again set new records in service to farmers and their marketing, purchasing, and business service cooperatives as well as in farmer investment in the System.

Farmers and their cooperatives borrowed \$5.3 billion from the cooperative Farm Credit System in the year ended June 30, 1963. This was nearly 12 percent more than in the previous year.

Loans which farmers, ranchers, and cooperatives had outstanding on June 30, 1963, totaled \$6.3 billion and exceeded by 10 percent the amount outstanding a year earlier.

About 18 percent of the total credit farmers and ranchers were using on January 1, 1963, came from the cooperative Farm Credit System. Farmers' marketing, purchasing, and business service cooperatives are estimated to obtain about 60 percent of the credit they use from the 13 banks for cooperatives.

*Celebrate Anniversaries*

This year marked several anniversaries in the System. It marked the 30th year that the Farm Credit Administration, established by Executive order in 1933, has supervised the System. Created by the Farm Credit Act of 1933, it is also now 30 years since the production credit associations and banks for cooperatives began operations. The 12 Federal intermediate credit banks began operations in 1923, created by the Agricultural Credits Act of 1923, and are, therefore, celebrating their 40th anniversary. The 12 Federal land banks and Federal land bank associations, created by the Federal Farm Loan Act of 1916, are the oldest of the System. They began operations in 1917.

### *System Serves All Credit Needs.*

The cooperative Farm Credit System, supervised by the Farm Credit Administration, provides all types of credit needed by farmers and their cooperatives. Farmers obtain farm mortgage loans from 763 Federal land bank associations and 12 Federal land banks. These associations and banks are completely farmer-owned. Land bank loans are used principally to finance the purchase of farms and additional farm land, for buildings and improvements, to refinance debts, and for other agricultural purposes.

The 487 production credit associations, which obtain their lending funds from the 12 Federal intermediate credit banks, provide a system of short and intermediate term farm operating credit. Farmers use these loans for 1 year or less to finance seasonal operating expenses, for family living, and for other farm expenses. They also borrow, for periods up to 7 years, for such farm capital needs as the purchase of farm machinery, livestock, and farm improvements.

The 13 banks for cooperatives provide a complete system of credit for farmers' marketing, purchasing, and business service cooperatives. They make commodity, operating capital, and facility loans.

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#### FEDERAL FARM CREDIT BOARD

The Federal Farm Credit Board, a 13-member, part-time policymaking Board, directs, supervises, and controls the Farm Credit Administration. The Board met six times during the year. All meetings were held in Washington, D.C.

Twelve of the members of the Board, one from each Farm Credit district, are appointed by the President of the United States, with the advice and consent of the Senate, for 6-year terms. Members are not eligible for reappointment after serving a full 6-year term. The President is required by law, in making these appointments, to consider nominations from each Farm Credit district made by Federal land bank associations, production credit associations, and farmers' marketing, purchasing, and business service cooperatives which are stockholders of the district bank for cooperatives. Presidential appointments have all been from nominees of these three

groups. The Secretary of Agriculture designates the 13th member of the Board who serves at the Secretary's pleasure.

The names of the 13 members of the Board are shown on page v.

At its 1963 organization meeting, the Board elected Frank Stubbs as its chairman and J. Pittman Stone as vice chairman. J. Mahlon Selby was reelected secretary.

During the year, the Board approved the appointments by the Governor of the Farm Credit Administration of two members of the board of directors of the Central Bank for Cooperatives.

Again, as in previous years, to keep more fully advised on matters pertaining to agriculture, the Board met with various groups and representatives of groups. These included the national advisory committees of the production credit associations and Federal land bank associations; an Oklahoma congressional delegation; J. K. Stern, president, American Institute of Cooperation; and Roy F. Hendrickson, executive secretary, National Federation of Grain Cooperatives.

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## GOVERNOR'S OFFICE

The Governor is the chief executive officer of the Farm Credit Administration. He is appointed by the Federal Farm Credit Board to administer the law and carry out the Board's policies and is responsible to the Board for administering all the powers, functions, and duties of the Farm Credit Administration in supervising the cooperative Farm Credit System. He informs and consults with the Board on matters of a broad and general supervisory, advisory, or policy nature, and is subject to the Board's decisions and supervision.

As in previous years, the Governor kept the Federal Farm Credit Board informed between its regular meetings on activities of the Farm Credit System and other matters of importance in the fields of farm credit and agriculture.

## 13

The *Cooperative Bank Service*, headed by a director who is also a deputy governor, supervises and coordinates the operations of the 13 banks for cooperatives—12 district banks and the Central Bank—which provide an esti-

mated 60 percent of the credit used by farmers' marketing, purchasing, and business service cooperatives.

The service keeps in close touch with the credit needs of farmers' cooperatives and works with officials of the banks for cooperatives in improving and adapting their credit service to meet changes in modern agriculture. By constantly reviewing and analyzing the operations of the banks, this service is able to advise and counsel with officials on how best to increase their usefulness and effectiveness. An important part of its work is conducting conferences and participating in management training programs.

The service coordinates the borrowing and lending programs of the banks. It reviews and analyzes certain loans submitted by the banks. It issues rules and regulations to guide the banks in making loans in accordance with the provisions of the laws under which they operate. It also reviews and makes recommendations to the Governor on all applications for sales of debentures by the banks.

#### *Staff and Service Divisions*

In addition to the credit services which have the direct responsibility of supervising the activities of the banks and associations in the 12 districts, during the year ended June 30, 1963, there were several closely coordinated divisions. Two of these were staff divisions—legal and examination. Four were

service divisions—accounting and budget; finance; personnel; and research and information. \* \* \*

#### FISCAL AGENT

18 John T. Knox, the fiscal agent for the Federal land banks, Federal intermediate credit banks, and banks for cooperatives, handles the sales of bonds and debentures for these banks. His office is located in the center of the financial district of New York City, at One Chase Manhattan Plaza. He arranges periodic sales of bonds and debentures for these banks to the public through a nationwide group of security dealers and dealer banks organized by his office. These sales provide the Farm Credit System's main source of lending funds.

He also buys and sells investment securities on request of the Farm Credit banks and associations.

In the year ended June 30, 1963, the fiscal agent's office, with a complement of five people, handled the sale of more than \$4.3 billion of securities. As in past years, intermediate credit bank debentures were sold monthly. There were four sales of Federal

land bank bonds and six sales of debentures of the banks  
47 for cooperatives.

#### BANKS FOR COOPERATIVES

The greatly stepped up activities of farmers' marketing, purchasing, and business service cooperatives are reflected in the increased loan volume of the 13 banks for cooperatives. This has resulted in the banks setting new records both in the number of cooperatives served and in their volume of loan activity.

In financing farmers' cooperatives, the 13 banks are called upon to help many of them solve important problems. Typical of these problems are the narrow margins many cooperatives are having to operate on in an effort to meet extremely keen competition.

While the number of cooperatives continues to decline, mostly through mergers and consolidations, there has been a decided shift toward multiservice cooperatives. From these cooperatives members have a more complete and often one-stop service. In taking on more services, in addition to needing employees with the skills necessary to handle them, many cooperatives have to enlarge their facilities. The buildings and equipment needed often call for additional capital which is provided largely by borrowing.

Some cooperatives are changing from one type of service to another. A shift such as that from grain storage to grain merchandising not only may involve risk, but know-how and financing that are quite different from those related to the storage business.

In the farm supply field some cooperatives, as in the past, are encountering difficulties by extending open account credit to their member-patrons. Many of these cooperatives have taken steps to analyze their accounts receivable in order to develop a credit policy adapted to the best interest of both the cooperative and its entire membership. In several Farm Credit districts, cooperatives obtain some assistance with this problem by ar-



ranging with production credit associations to provide credit to the members of the cooperatives so they can pay for their purchases in cash.

### *New Loan Records Set*

Farmers' marketing, purchasing, and business service cooperatives in borrowing \$946 million from the 13 banks for cooperatives in the year ended June 30, 1963, set a new record in their use of these banks. This amount was 10 percent more than in the previous year. New records were also made in number of borrowers with loans outstanding and in their outstanding balances. The 2,824 borrowing cooperatives with an estimated membership of 3.7 million, had loans outstanding amounting to \$701 million on June 30, 1963.

48 About 79 percent of the amount loaned was to marketing cooperatives, 18½ percent to farm supply cooperatives, and the remainder to farm business service and other cooperatives. By commodity groups, grain cooperatives accounted for 36 percent of the total amount loaned. While about 10 percent more grain cooperatives borrowed from the banks than during the previous year, the total amount they borrowed in the year was slightly less than in the previous year. The next largest group of borrowers—fruit and vegetable associations—borrowed 9 percent more money in the year.

Farm supply cooperatives borrowed about 22 percent more than in the previous year with borrowings of petroleum products associations up about 21 percent.

The amount borrowed by cooperatives providing farm business services was down about 6 percent from the previous year.

The amount of facility loans outstanding on June 30, 1963, totaled \$300 million, or about 9 percent more than a year earlier. Operating capital loans outstanding totaled \$346 million, or about 1 percent less than a year earlier. Commodity loans outstanding of \$55 million were down 21 percent from a year ago due mostly to repayments from grain and cotton which had moved out of storage earlier than in previous years.

### *Change in Maturity of Loans*

The amount of short-term loans payable in 1 year outstanding on June 30, 1963, declined about 9 percent from a year earlier but the amount of long-term loans was up 15 percent. Of

the \$45 million increase in outstanding long-term loans \$43 million was in facility loans and \$2 million in operating capital loans.

### *Provide Credit on Sound Basis*

The 12 district banks—1 in each Farm Credit district—and the Central Bank for Cooperatives in Washington, D.C., were organized under the Farm Credit Act of 1933. They provide a permanent source of credit for farmer cooperatives on a sound business basis. The Farm Credit Act of 1955 provides a plan under which the banks ultimately will be completely owned by farmers through their cooperatives. By June 30, 1963, Government capital had been reduced to about 30 percent of the banks' net worth. Cooperatives borrowing from the banks are engaged in processing, transporting, grading, packaging, and marketing of farm products; purchasing and manufacturing of farm supplies; and in furnishing farm business services.

Cooperatives borrow directly from the 12 district banks. The Central Bank for Cooperatives is largely engaged in assisting the district banks to serve their borrowers. Its main lending function is purchasing participations in larger loans made by the district banks, which exceed the lending limits of a district bank, and making direct loans to the 12 district banks to assist them in meeting their needs for lending funds.

### *Make Three Types of Loans*

Three types of loans are available from banks for cooperatives. Commodity loans are used by cooperatives to help finance the storage and orderly marketing of agricultural products. Operating capital loans are used on a seasonal or longer term basis to supplement a cooperative's operating funds or working capital. Facility loans are used to construct or acquire physical facilities essential to operation and growth.

### *Working With Cooperatives*

The banks for cooperatives continued during the year to make advice and counsel available especially to cooperatives facing adjustments in their operations. Many requests for assistance came from cooperatives considering mergers, consol-

idations, and other moves toward expansion. The banks were called upon to help a number of the cooperatives in improving their efficiency in order to meet especially keen competition. Many cooperatives needed counsel in regard to methods of acquiring the additional skills, facilities, and capital needed in making necessary adjustments.

The banks continued to help cooperatives in developing better financial planning, more effective membership relations, and director management and employee training programs. The banks have worked closely with borrowing cooperatives to help them in interpreting and complying with the provisions of the Revenue Act of 1962.

Continued effort was made to help borrowing cooperatives improve their audit reports. These reports are required at least yearly. The cooperatives also regularly send the banks operating reports, financial statements, budgets, and other operating, financial, and organization information. The banks also periodically review the business policies and operations of all borrowing cooperatives. The banks appraise the facilities when mortgage security is given.

In providing these and similar services, the banks not only helped cooperatives to improve their operations but enabled them to give better service to their farmer-members.

### *Meet Training and Research Needs*

To meet the needs of the increased complexity of providing constructive credit for farmer cooperatives, at the request of the presidents of the banks for cooperatives, the Cooperative Bank Service of the Farm Credit Administration held three credit conferences. As in the previous year, four banks participated in each conference. At these conferences, actual loan cases were reviewed and studied. The practices, procedures, and policies used in the 13 banks were discussed and evaluated.

The 3-year study, "Trends in Financing Farmer Cooperatives," the most thorough and comprehensive study so far undertaken in the field of financing farmer cooperatives, continued in its second year. Principles, practices, and ideas regard-

ing the use of credit and equity capital helpful to farmer cooperatives are being developed in the study which is scheduled to be completed about June 30, 1964. The findings will be of help to the banks for cooperatives in improving their credit and counseling services.

### *Use Three Sources of Loan Funds*

As in previous years, the banks for cooperatives loan funds came mainly from three sources—sales of debentures, short-term borrowings, and their net worth.

The average daily indebtedness of the banks to all sources of funds during the year was \$511 million compared with \$468 million the previous year. Peak month-end indebtedness was \$550 million on January 31, 1963, compared with \$510 million on March 31, 1962.

On June 30, 1963, the banks had borrowings of \$469 million outstanding compared with \$467 million a year earlier. This amount consisted of \$459 million of debentures compared with about \$430 million a year earlier; \$10 million in loans from commercial banks compared with \$36 million a year earlier; and notes payable to Farm Credit banks of \$350,000 compared with \$2 million a year earlier. Total borrowings from commercial banks and other Farm Credit banks during the year amounted to \$413 million compared with \$556 million the previous year.

### *More Debentures Sold*

The banks for cooperatives continued a regular bimonthly schedule, begun 4 years ago, of selling debentures in the investment market. The six sales of short-term debentures total \$984 million compared with \$887 million in the previous year, up about 11 percent.

The interest paid on debentures varied from a low of 3.15 percent on \$160 million issued in December 1962 to a high of 3.48 percent on \$196 million sold in August 1962. The weighted average cost of debentures outstanding on June 30, 1963, was 3.27 percent, compared with 3.21 percent a year earlier, and 2.88 percent two years earlier. The weighted average cost to the banks of debentures issued during the year was 3.28 per-

cent compared with 3.18 a year earlier and 3.05 two years earlier.

The consolidated debentures issued by the banks for cooperatives are the joint and several obligations of the 13 banks for cooperatives. The U.S. Government assumes no liability, direct or indirect, for the debentures issued either as to payment of principal or interest. For further information on debentures see appendix table 42.

### *Intersystem Borrowing Continues*

During the year, the banks borrowed \$108 million of temporarily surplus funds from Federal intermediate credit banks and \$48 million from Federal land banks, or a total of \$156 million. This compares with a total of \$212 million borrowed the previous year. Since the program began January 1, 1957, \$1.1 billion of temporarily surplus funds have been obtained by banks for cooperatives by intersystem borrowing.

On the other hand, the banks for cooperatives loaned \$89 million of their temporarily surplus funds to the land banks and intermediate credit banks during the year compared with \$41 million the previous year.



## Cooperative Farm Credit System

TABLE 1.—*Loans and discounts made and outstanding*

	Loans and discounts made—				Loans and discounts outstanding June 30, 1963	
	Year ended June 30, 1963		From organization through June 30, 1963		Number	Amount
	Number	Amount	Number	Amount		
Banks and associations						
Federal land banks.....	46,657	4,82,113,560	1,777,602	\$9,957,929,184	380,403	\$3,198,005,630
Federal intermediate credit banks.....		4,405,959,574		50,137,327,446		2,292,711,616
Banks for cooperatives.....	2,209	945,995,709	43,193	12,162,578,518	12,824	700,562,049
Production credit associations.....		3,421,245,165		33,537,327,970	1,307,963	2,300,401,919
Grand total.....		9,455,505,338		105,825,463,118		8,491,681,214
Less Federal intermediate credit bank loans to and discounts for production credit associations and banks for cooperatives.....		4,131,697,345		43,351,361,366		2,166,014,213
Net total.....		5,323,807,993		62,474,101,752		6,325,666,901
Memo: Federal Farm Mortgage Corporation.....			679,900	1,218,018,739		

1 Number of cooperative associations having loans outstanding.

2 Number of members having loans outstanding.

## Cooperative Farm Credit System

TABLE 2.—Interest and discount rates on specific dates

(Percent per annum)

Item	Dec. 31, 1933	June 30, 1934	June 30, 1935	June 30, 1936	June 30, 1937	June 30, 1938	June 30, 1939	June 30, 1940	June 30, 1941	June 30, 1942	June 30, 1943
Federal land banks: Federal land bank associations:											
Contract rate	5	4-1/2	4-1/2	4-5	4-5	4-5	5-3/4	6	5-5/8	5-5/8	5-5/8
Reduced rate 1	4-1/2										
Production credit associations:											
Federal intermediate credit banks	6	4-1/2	4-1/2	4-5	4-5	4-5	5-5/8	6-3/4	5-5/8	5-5/8	4-5/8
Blanket for cooperatives:	2-1/2-3	2	2-1/2	2-1/2	2-1/2	2-1/2	3-3/4	4-1/2	3-3/4	4-1/2	4-1/2
Commodity loans:											
Operating capital loans	4	3	3	3-1/2	3-1/2	3-1/2	3-1/2	3-1/2	3-1/2	3-1/2	3-1/2
Facility loans	4-1/2	4	4	4-1/2	4-1/2	4-1/2	4-5	4-5	4-5	4-5	4-5

1 Interest charged borrowers on Federal land bank loans from July 11, 1933, to June 30, 1944, was at reduced rates authorized by Congress.

## Cooperative Farm Credit System

TABLE 3.—Net worth

Banks and associations	June 30, 1963					June 30, 1963			Peak capital owned by U.S. Government	
	Member-owned capital	U.S. Government capital	Earned net worth	Total net worth	Member-owned capital	U.S. Government capital	Earned net worth	Total net worth	Amount	Date
Federal land banks.....	\$189,644,570		\$318,371,644	\$508,016,214	\$173,617,230		\$228,150,510	\$473,767,740	\$313,942,505	June 30, 1960
Federal land bank associations.....	189,688,253		102,770,833	292,459,118	173,697,590		94,926,356	270,623,986		
Federal intermediate credit banks.....	149,891,175	\$114,889,120	79,101,512	213,991,507	140,324,790	\$101,359,120	75,067,029	216,680,939	114,989,120	June 30, 1963
Production credit associations.....	225,116,913	175,000	107,531,612	392,133,525	297,341,149	495,000	153,435,773	336,284,922	90,106,775	Nov. 30, 1964
Banks for cooperatives.....	80,111,973	80,911,100	107,732,113	368,775,186	66,869,229	94,837,500	106,623,708	267,480,467	178,500,000	May 1945 to Feb. 28, 1964
Grand total.....	734,452,916	165,075,220	767,527,714	1,666,053,850	661,163,668	196,691,620	727,253,426	1,553,138,054	XXX	
Less intercorporate items.....	237,219,765			237,219,765	214,302,875			214,302,875	XXX	
Net total.....	497,233,151	165,075,220	767,527,711	1,428,834,085	446,860,793	196,691,620	727,253,426	1,370,785,179	638,392,995	June 30, 1960

\* Includes \$2,315,980 in 1963 and \$1,789,435 in 1962 in participation certificates owned by financing institutions other than production credit associations.

## Farm Mortgage Loans Made or Recorded

TABLE 4.—Farm mortgage loans made and estimated amount of farm mortgages recorded by principal lenders during the year ended June 30, 1963, by Farm Credit districts<sup>1</sup>

(Thousands)

District	Loans made by Federal land banks <sup>2</sup>	Mortgages recorded <sup>3</sup>				Total all lenders
		Individuals	Banks and trust companies	Insurance companies	Miscellaneous lenders <sup>4</sup>	
Springfield.....	\$10,000	\$22,313	\$42,731	\$1,054	\$20,205	\$106,269
Baltimore.....	18,544	40,582	91,782	10,324	31,162	192,374
Columbia.....	58,017	55,870	78,043	24,872	184,657	381,459
Covington.....	74,053	48,650	132,511	60,404	177,811	493,428
New Orleans.....	44,381	34,534	50,961	31,648	82,913	244,437
St. Louis.....	62,274	61,640	84,538	113,296	87,840	409,788
St. Paul.....	103,700	36,459	100,220	42,403	49,430	334,221
Omaha.....	8,073	70,289	38,783	103,805	49,155	347,105
Wichita.....	53,019	73,454	40,248	83,230	41,531	291,473
Houston.....	19,862	96,276	41,787	92,744	55,516	346,185
Berkeley.....	61,399	159,709	98,734	50,410	93,989	464,241
Spokane.....	53,571	25,622	22,945	47,846	57,422	207,406
United States.....	694,950	725,507	823,263	603,026	911,640	3,818,386

<sup>1</sup> 48 States only.<sup>2</sup> Includes outstanding balances as well as new money advanced where existing borrowers obtained additional loans.<sup>3</sup> Estimates based on reports from counties including approximately 60 percent of the farms in the United States.<sup>4</sup> Includes the Farmers Home Administration; mortgage and investment companies; savings and loan associations; when the mortgage appears to cover farm real estate; State and local governmental agencies; agents and representatives of undisclosed lenders; production credit associations, when the mortgage is secured by farm real estate; religious, educational, civic, and fraternal organizations; and any other lenders not specifically mentioned.

### Farm Mortgage Loans Made or Recorded

TABLE 5. Estimated total amount of farm mortgages recorded by all lenders, by Farm Credit districts:<sup>1</sup>

Year ended	Spring field	Full year	Columbia	Concordia	New Orleans	St. Louis	St. Paul	Omaha	Wichita	Harkey	Spokane	United States
Dec. 31												
1910	\$11.0	\$11.3	\$11.0	\$11.0	\$11.3	\$11.7	\$11.0	\$11.3	\$11.3	\$11.3	\$11.3	\$11.3
1911	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1912	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1913	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1914	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1915	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1916	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1917	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1918	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1919	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1920	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1921	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1922	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1923	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1924	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1925	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1926	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1927	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1928	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1929	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1930	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1931	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1932	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1933	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1934	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1935	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1936	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1937	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1938	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1939	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1940	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1941	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1942	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1943	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1944	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1945	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1946	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1947	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1948	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1949	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1950	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1951	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1952	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1953	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1954	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1955	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1956	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1957	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1958	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1959	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1960	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1961	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1962	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1963	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1964	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1965	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1966	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1967	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1968	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1969	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1970	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1971	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1972	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1973	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1974	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1975	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1976	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1977	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1978	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1979	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1980	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1981	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1982	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1983	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1984	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1985	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1986	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1987	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1988	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1989	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1990	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1991	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1992	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1993	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1994	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1995	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1996	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1997	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1998	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
1999	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2000	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2001	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2002	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2003	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2004	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2005	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2006	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2007	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2008	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2009	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11.3
2010	11.0	11.3	11.0	11.0	11.3	11.7	11.0	11.3	11.3	11.3	11.3	11

<sup>1</sup> Estimates for the years 1910 through 1953 were prepared by the Economic Research Service (formerly the Bureau of Agricultural Economics) U.S. Department of Agriculture. From 1954 to 1955 estimates were prepared by the Farm Credit Administration. Estimates for 1954 and 1955 were prepared jointly. Since 1955, estimates have been prepared by the Federal land banks.

\* All States only



## Banks for Cooperatives

TABLE 36.—*Loans made and repayments for the year ended June 30, 1963, and loans outstanding, June 30, 1963*

Bank	Loans made	Repayments	Loans outstanding
Springfield.....	\$36,305,574	\$34,763,035	\$21,504,491
Baltimore.....	49,593,912	47,584,066	40,882,192
Columbia.....	70,692,664	57,950,571	56,174,037
Louisville.....	56,370,242	54,883,035	53,637,036
New Orleans.....	47,133,120	36,779,354	27,939,959
St. Louis.....	171,286,664	167,481,333	99,625,679
St. Paul.....	153,141,979	170,687,679	99,296,708
Omaha.....	72,701,444	76,602,866	52,228,450
Wichita.....	79,517,723	94,631,500	90,083,350
Houston.....	75,948,654	73,853,897	41,957,836
Berkeley.....	94,537,424	88,223,428	91,519,958
Spokane.....	36,745,249	32,228,091	36,092,353
Eliminations: Participation loans.....	600,000	600,000	
Total.....	943,253,409	934,301,355	699,002,049
Central Bank.....	310,288,525	339,037,928	123,012,225
Eliminations: Participation loans.....	308,609,225	327,787,196	121,452,225
Grand total.....	945,542,709	936,547,087	700,562,049

TABLE 37.—*Loans outstanding, June 30, 1963; by type of loan*

Bank	Commodity		Operating capital		Facility		Total	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Springfield.....			79	\$10,945,647	44	\$4,618,811	94	\$21,504,491
Baltimore.....	3	\$2,397,687	68	26,739,065	40	14,745,500	76	40,882,192
Columbia.....	6	9,121,632	48	21,574,029	44	22,477,776	58	56,174,037
Louisville.....	1	152,000	296	29,213,830	250	21,241,296	299	53,637,036
New Orleans.....	1	1,000,000	68	9,701,508	112	17,238,421	189	27,939,959
St. Louis.....	9	19,819,264	179	29,673,514	190	47,137,591	233	99,625,679
St. Paul.....	1	790	387	65,059,247	213	21,626,658	601	99,296,708
Omaha.....	13	4,321,682	339	30,768,319	278	17,139,619	385	52,228,450
Wichita.....	18	5,635,755	302	32,611,514	451	51,785,281	496	90,083,350
Houston.....	2	1,927,677	84	12,389,297	195	27,640,952	205	41,957,836
Berkeley.....	7	8,512,785	95	45,587,322	199	37,116,851	137	91,519,958
Spokane.....			50	21,724,373	83	14,367,980	95	36,092,353
Eliminations: Participation loans.....								
Total.....	61	53,233,675	1,965	345,598,373	2,079	300,169,999	2,823	699,002,049
Central Bank.....	8	6,684,500	30	91,707,928	15	24,619,797	41	123,012,225
Eliminations: Participation loans.....	7	5,124,500	30	91,707,928	15	24,619,797	40	121,452,225
Grand total.....	62	54,793,675	1,965	345,598,375	2,079	300,169,999	2,824	700,562,049

<sup>1</sup> Represents number of cooperative associations having loans outstanding.

<sup>2</sup> Associations having more than one type of loan are counted only once in the total column.

## Banks for Cooperatives

TABLE 38.—*Loans outstanding, June 30, 1963, by type, and by principal product or service*

Principal product or service	Commodity		Operating capital		Facility		Total	
	Number <sup>1</sup>	Amount	Number <sup>1</sup>	Amount	Number <sup>1</sup>	Amount	Number <sup>1</sup>	Amount
<b>Farm products</b>								
Citrus fruits.....	3	\$7,363,632	13	\$3,355,050	15	\$5,431,580	22	\$16,151,177
Other fruits and vegetables.....	3	812,193	84	80,419,492	87	20,228,479	115	77,460,161
Wine and brandy.....	6	8,812,785	12	4,115,056	6	1,278,085	13	11,205,926
Dairy.....	1	2,000,000	158	30,729,165	152	28,037,925	228	60,833,090
Poultry.....	2	802,700	24	8,746,947	21	5,187,348	29	14,436,995
Grain.....	30	25,352,934	600	86,850,548	800	88,490,660	1,040	200,729,838
Tobacco.....			5	4,606,251	9	443,450	11	5,109,701
Sugar.....	2	1,852,618	2	1,209,361	12	14,217,023	13	17,369,002
Wool and mohair.....	2	1,942,575	3	2,325,100	1	57,000	5	4,324,675
Cotton fiber.....	5	4,755,677	4	4,759,745	8	3,181,405	9	12,696,827
Livestock.....			13	1,518,282	10	655,000	15	2,173,372
Products of oil-bearing crops.....	5	1,409,563	17	9,958,224	16	8,567,180	22	20,021,967
Peanuts.....			1	821,511				821,511
Seed.....			6	1,323,691	5	509,844	8	1,833,705
Other.....	1	202,745	11	6,174,799	10	5,296,538	15	11,673,882
<b>Total farm products</b> .....	63	72,177,442	1,037	216,716,871	1,218	187,776,016	1,345	476,510,379
<b>Farm supply</b>								
General.....	1	1,940,000	441	84,391,879	289	44,672,185	444	131,304,064
Petroleum products.....			301	31,366,127	106	4,647,354	329	36,319,481
Other.....			12	3,488,577	19	23,683,134	22	27,171,711
<b>Total farm supply</b> .....	1	1,940,000	754	119,246,583	414	73,002,673	496	194,709,256
<b>Farm business services</b>								
Irrigation.....			13	261,611	72	3,328,087	77	3,589,697
Insurance.....			1	4,000			1	4,000
Warehousing.....			5	149,500	70	3,131,550	11	3,281,050
Cotton gins.....			92	3,106,461	272	20,331,113	276	23,437,574
Refrigerated food lockers.....					3	10,570	3	10,570
Grain drying.....			7	480,700	27	6,403,618	27	6,884,318
Other.....			10	1,244,690	10	351,038	14	1,595,748
<b>Total farm business services</b> .....			128	5,246,962	394	33,556,004	409	38,802,966
<b>Miscellaneous</b>								
Farmers' exchanges.....	1	676,233	22	4,245,109	22	3,130,206	29	8,051,548
Other.....			4	102,850	1	2,325,100	5	2,427,950
<b>Total miscellaneous</b> .....	1	676,233	26	4,347,959	23	5,455,306	34	10,479,498
<b>Grand total</b> .....	62	54,793,675	1,965	345,598,375	2,079	300,169,999	2,824	700,562,049

<sup>1</sup> Figures are for cooperative associations having loans outstanding.<sup>2</sup> An association having more than one type of loan or more than one type of product or service is counted only once in total column.

Banks for Cooperatives  
TABLE 39.—Credit extended during specified periods

Bank	Organization through June 30, 1933 <sup>1</sup>	Year ended June 30—					Organization through June 30, 1933
		1939	1940	1941	1942	1943	
Springfield.....	\$440,838.051	\$21,810.689	\$22,008.350	\$25,034.627	\$22,928.164	\$29,395.574	\$506,352.653
Baltimore.....	381,857.961	40,136.991	38,049.579	35,455.657	47,287.669	43,593.912	572,491.749
Columbia.....	570,384.729	35,432.721	47,193.637	49,909.711	49,393.016	70,691.664	834,973.773
Louisville.....	492,056.233	35,610.796	39,562.669	44,782.916	53,732.964	56,379.242	522,123.759
New Orleans.....	470,765.823	23,087.584	23,099.569	26,531.708	29,690.729	45,133.150	618,328.023
St. Louis.....	773,344.207	61,431.328	104,342.591	129,437.067	128,342.881	171,286.464	1,492,354.794
St. Paul.....	827,176.708	100,630.792	106,393.111	140,762.773	163,239.563	123,163.629	1,479,297.199
Omaha.....	328,489.961	36,993.244	38,923.317	44,615.431	64,438.527	72,791.444	616,349.839
Wichita.....	680,085.740	79,117.392	55,442.259	75,164.303	103,235.059	79,317.723	1,074,962.673
Houston.....	537,967.098	43,002.854	62,066.891	70,631.033	59,794.021	75,946.654	646,791.621
Berkeley.....	828,830.859	77,624.981	82,516.468	70,393.131	82,433.066	94,537.674	1,297,793.969
Spokane.....	325,304.973	28,666.439	27,740.769	27,411.799	29,324.729	26,744.269	477,241.943
Eliminations: Participation loans.....	26,638.033	500.000	600.000	600.000	600.000	600.000	29,138.033
Total.....	6,640,459.643	614,046.131	662,159.824	743,678.225	857,549.615	943,253.699	10,461,312.953
Central Bank.....	3,654,954.751	193,019.122	204,466.303	267,615.564	290,441.028	310,289.225	4,828,696.553
Eliminations: Participation loans.....	1,608,003.981	171,298.812	194,131.545	254,146.964	292,633.623	294,003.225	2,625,396.773
Total.....	8,667,465.413	636,728.431	672,464.794	757,349.328	860,327.631	943,306.799	12,559,791.796

<sup>1</sup> Includes advances under Commodity Credit Corporation programs.

## Banks for Cooperatives

TABLE 40.—*Loans made during the year ended June 30, 1963, and loans outstanding, June 30, 1963*

District and State	Loans made		Loans outstanding	
	Number	Amount	Number <sup>1</sup>	Amount
<b>District 1:</b>				
Maine.....	13	\$7,794,145	6	\$1,318,593
New Hampshire.....	1	236,876	1	220,834
Vermont.....	3	347,309	4	309,412
Massachusetts.....	5	15,663,300	7	9,462,825
Rhode Island.....				
Connecticut.....	5	1,800,400	4	1,376,050
New York.....	30	12,627,692	69	10,245,204
New Jersey.....	3	89,152	4	221,873
<b>Total.....</b>	<b>60</b>	<b>38,558,874</b>	<b>95</b>	<b>23,154,491</b>
<b>District 2:</b>				
Pennsylvania.....	50	16,950,192	42	13,622,262
Delaware.....				
Maryland.....	5	1,624,000	4	987,907
Virginia.....	18	11,294,250	20	15,469,742
West Virginia.....	4	70,080	3	67,436
Puerto Rico.....	11	20,575,390	7	10,714,845
<b>Total.....</b>	<b>68</b>	<b>49,533,912</b>	<b>76</b>	<b>40,882,192</b>
<b>District 3:</b>				
North Carolina.....	16	2,686,381	13	5,969,839
South Carolina.....	18	1,181,584	11	1,215,972
Georgia.....	14	24,959,487	12	19,947,252
Florida.....	44	41,782,412	22	29,616,974
<b>Total.....</b>	<b>92</b>	<b>70,609,864</b>	<b>58</b>	<b>56,174,637</b>
<b>District 4:</b>				
Ohio.....	33	20,451,069	154	20,450,966
Indiana.....	49	17,931,045	92	21,950,425
Kentucky.....	5	4,800,000	7	968,250
Tennessee.....	68	13,188,188	66	10,267,395
<b>Total.....</b>	<b>155</b>	<b>56,370,242</b>	<b>229</b>	<b>53,637,036</b>
<b>District 5:</b>				
Alabama.....	24	3,249,650	22	3,447,058
Mississippi.....	64	30,630,955	90	21,078,635
Louisiana.....	27	11,262,515	27	3,414,260
<b>Total.....</b>	<b>115</b>	<b>45,133,120</b>	<b>139</b>	<b>27,939,953</b>
<b>District 6:</b>				
Illinois.....	145	46,477,613	131	36,763,063
Missouri.....	46	35,798,701	54	30,093,191
Arkansas.....	27	89,010,150	49	29,996,138
<b>Total.....</b>	<b>218</b>	<b>171,286,464</b>	<b>234</b>	<b>96,852,392</b>

## Banks for Cooperatives

TABLE 40.—*Loans made during the year ended June 30, 1963, and loans outstanding, June 30, 1963—Continued*

District and State	Loans made		Loans outstanding	
	Number	Amount	Number <sup>1</sup>	Amount
District 7:				
Michigan.....	52	\$23,296,816	80	\$10,912,837
Wisconsin.....	108	18,083,766	145	10,760,275
Minnesota.....	153	109,312,250	254	65,446,935
North Dakota.....	54	2,231,373	153	2,459,949
Total.....	367	152,923,939	602	90,579,996
District 8:				
Iowa.....	308	51,525,478	364	38,470,336
South Dakota.....	24	2,688,465	30	2,658,468
Nebraska.....	108	18,661,003	89	10,799,119
Wyoming.....	1	236,498	5	360,527
Total.....	441	72,501,444	388	52,288,450
District 9:				
Kansas.....	177	44,907,488	238	57,569,593
Oklahoma.....	80	26,550,043	142	21,056,445
Colorado.....	29	7,588,662	95	8,789,295
New Mexico.....	6	471,500	21	2,668,017
Total.....	292	79,517,723	496	90,083,350
District 10:				
Texas.....	190	75,948,654	205	41,957,836
District 11:				
Arizona.....	14	1,985,420	10	3,098,815
Utah.....	7	6,173,500	6	3,111,452
Nevada.....	1	—	—	—
California.....	102	86,178,594	121	85,309,691
Total.....	124	94,337,424	137	91,519,658
District 12:				
Montana.....	5	200,700	13	716,069
Idaho.....	14	3,002,431	14	5,895,613
Washington.....	40	11,637,638	42	10,435,095
Oregon.....	26	23,904,480	26	19,045,556
Total.....	85	38,745,249	95	36,092,353
Grand total.....	2,209	945,506,709	2,824	700,562,049

<sup>1</sup> Represents cooperative associations having loans outstanding.



## Banks for Cooperatives

TABLE 41.—*Loans made and outstanding*

Year ended June 30—	Loans made		Loans outstanding at end of period	
	Number	Amount	Number of cooperatives having loans outstanding	Amount
1934.....	(1)	\$36,753,583	(1)	\$20,539,458
1935.....	(1)	50,785,251	979	23,936,683
1936.....	12,527	63,679,134	1,209	39,500,033
1937.....	1,246	85,543,877	1,465	45,032,454
1938.....	1,320	109,884,695	1,614	81,190,495
1939.....	1,145	86,161,001	1,645	59,576,528
1940.....	1,290	90,117,448	1,689	62,176,619
1941.....	1,459	130,900,052	1,728	73,746,996
1942.....	1,625	200,943,417	1,732	101,225,869
1943.....	1,115	267,289,848	1,476	101,885,250
1944.....	1,127	416,168,106	1,328	143,013,678
1945.....	1,050	379,885,224	1,247	134,859,835
1946.....	1,023	341,899,498	1,251	114,549,781
1947.....	1,271	427,482,904	1,379	155,238,680
1948.....	1,303	547,528,483	1,559	231,518,249
1949.....	1,164	458,716,117	1,666	248,008,208
1950.....	1,318	372,659,298	1,754	244,605,580
1951.....	1,607	509,553,818	1,920	311,280,234
1952.....	1,417	536,879,618	1,925	342,377,354
1953.....	1,385	565,562,554	2,024	319,108,545
1954.....	1,377	491,173,531	2,050	\$33,545,019
1955.....	1,425	560,034,236	2,129	316,794,806
1956.....	1,633	567,220,422	2,277	349,074,140
1957.....	1,780	583,577,726	2,393	384,328,803
1958.....	1,921	630,122,357	2,523	408,257,152
1959.....	2,378	639,728,451	2,689	525,880,724
1960.....	2,030	672,464,784	2,754	550,712,891
1961.....	1,988	757,349,328	2,795	594,548,829
1962.....	2,057	860,337,051	2,817	692,362,803
1963.....	2,209	945,506,709	2,824	700,562,049
Total.....	43,193	12,162,878,518		

1 Not available.

2 Organization 1933 to date.

## Banks for Cooperatives

TABLE 42.—Consolidated debentures issued, retired, and outstanding, year ended June 30, 1963

Description of issue		Unmatured debentures outstanding June 30, 1962	Debentures issued dur- ing year	Debentures retired dur- ing year	Unmatured debentures outstanding June 30, 1963
Rate and maturity	Date of issue				
4.20% Aug. 1, 1962.....	Feb. 1, 1962	\$141,000,000	-----	\$141,000,000	-----
3.10% Oct. 1, 1962.....	Apr. 2, 1962	156,500,000	-----	156,500,000	-----
3.05% Dec. 3, 1962.....	June 4, 1962	132,000,000	\$3,500,000	135,500,000	-----
3 3/8% Feb. 4, 1963.....	Aug. 1, 1962	-----	198,000,000	198,000,000	-----
3.15% Apr. 1, 1963.....	Oct. 1, 1962	-----	161,000,000	161,000,000	-----
3.05% June 3, 1963.....	Dec. 3, 1962	-----	162,500,000	162,500,000	-----
3.15% Aug. 1, 1963.....	Feb. 4, 1963	-----	169,000,000	-----	\$169,000,000
3.15% Oct. 1, 1963.....	Apr. 1, 1963	-----	160,000,000	-----	160,000,000
3.20% Dec. 2, 1963.....	June 3, 1963	-----	133,000,000	-----	133,000,000
Total.....	-----	429,500,000	967,000,000	954,500,000	462,000,000

<sup>1</sup> Included \$3,000,000 debentures issued for use as collateral for short-term borrowings and not a part of the public issue.

## Banks for Cooperatives

TABLE 43.—Combined statements of condition

ASSETS	June 30, 1963	June 30, 1962
Loans to cooperative associations:		
Commodity.....	\$54,793,675	\$60,264,954
Operating capital.....	345,598,375	348,604,708
Facility.....	300,160,999	274,433,141
Total.....	700,562,049	692,362,803
Less participation certificates out- standing.....	13,061	18,367
Net.....	\$700,548,988	\$692,344,436
Notes receivable and sales contracts.....	505,908	451,698
Accrued interest receivable on loans, notes receivable, and sales con- tracts.....	8,263,713	7,930,222
Total.....	709,318,609	700,726,356
Less reserve for losses.....	8,255,794	6,650,189
Net.....	701,062,815	694,076,167
Loans to other Farm Credit banks.....	750,000	1,900,000
Cash.....	12,094,571	12,258,554
U.S. Government securities (par).....	43,051,000	43,000,000
Unamortized premium (or discount) (net).....	(269,539)	20,733
Loans in process of liquidation.....	340,221	51,440
Less reserve.....	51,000	310,221
Assets acquired in liquidation of banks.....	207,324	228,437
Less reserve.....	143,992	64,332
Fixed and other assets.....	2,575,701	2,492,433
Less provision for depreciation.....	511,614	476,921
Total assets.....	709,130,547	753,438,300

## Banks for Cooperatives

TABLE 43.—Combined statements of condition—Continued

LIABILITIES	June 30, 1963		June 30, 1962	
Unmatured consolidated debentures outstanding.....	\$472,000,000		\$429,500,000	
Less debentures owned.....	3,000,000	\$429,000,000		\$429,500,000
Notes payable:				
Commercial banks.....	10,073,000		33,615,000	
Other Farm Credit banks.....	350,000	10,423,000	2,000,000	37,615,000
Accrued interest payable.....		3,782,094		3,443,317
Dividends payable on class B capital stock and guaranty fund.....		372,936		405,641
Federal franchise tax payable.....		2,170,263		2,250,367
Due U.S. Government—Retirement of class A capital stock.....		13,926,400		11,979,500
Other liabilities.....		674,648		763,968
Capital stock and guaranty fund:				
Class A—U.S. Government.....	94,837,500		106,817,000	
Less in process of retirement.....	13,926,400		11,979,500	
Net.....	80,911,100		94,837,500	
Class B—Cooperative associations and others.....	11,229,369		12,235,983	
Class C—Cooperative associations.....	68,830,284		84,663,776	
Other—Cooperative associations.....	51,300		89,400	
Total.....	161,023,073		161,826,750	
Surplus—Reserved.....	88,111,198		88,111,198	
Surplus—Allocated to patrons.....	19,640,915	268,775,186	17,542,510	267,450,467
Total liabilities.....		750,126,847		753,438,800

## NOTES

(a) Loans of \$196,053,426 in 1963, and \$452,379,234 in 1962 were assigned as collateral for consolidated debentures, which are issued by and are the liability of the 13 banks for cooperatives.

(b) Loans of \$9,080,000, U.S. Government securities of \$4,448,000 (par amount) in 1963, and loans of \$48,617,134 and U.S. Government securities of \$4,439,000 (par amount) in 1962 were assigned as collateral for notes payable.

(c) This statement does not include outstanding letters of credit issued by banks in the sums of \$97,000 during 1963, and \$485,000 during 1962. Advances made under these letters of credit will be recorded as loans to cooperative associations.

(d) This statement does not include a liability of \$162,244, in 1962 for matured debentures (principal and interest), or a like amount of cash deposited with the Treasurer of the United States for their payment.

(e) The liability to the U.S. Government of \$13,926,400 on June 30, 1963, and \$11,979,500 on June 30, 1962, are the amounts of class A stock which the banks determine to retire in accordance with section 42 of the Farm Credit Act of 1933, as amended. Actual retirement was made shortly after the end of the fiscal years.

## Banks for Cooperatives

TABLE 44.—Statements of condition, June 30, 1963

ASSETS	Central Bank	Springfield	Baltimore	Columbia	Louisville	New-Orleans
<b>Loans to cooperative associations:</b>						
Commodity.....	\$6,684,600		\$2,397,687	\$9,121,632	\$452,000	\$1,000,000
Operating capital.....	91,707,928	\$10,945,947	28,739,005	24,574,820	29,243,830	9,701,538
Facility.....	26,619,797	4,648,844	11,745,500	22,477,776	24,241,206	17,293,421
Total.....	123,012,225	21,594,491	40,882,192	56,174,037	53,637,036	27,995,959
Less participation certificates outstanding.....		3,038,000	10,227,000	23,262,667	2,374,500	7,170,320
Net.....	123,012,225	18,556,491	30,655,192	32,911,040	51,262,536	20,769,639
Notes receivable and sales contracts.....			27,500	6,937		177,543
Accrued interest receivable on loans, notes receivable, and sales contracts.....	1,618,627	253,762	146,868	455,431	576,096	336,973
Total.....	124,630,852	18,810,253	30,802,060	33,366,478	51,838,632	21,264,155
Less reserve for losses.....	1,804,748	310,147	658,124	362,000	245,000	312,270
Net.....	122,826,104	18,499,106	30,143,936	33,004,478	51,593,632	20,951,885
Loans to other Farm Credit banks.....	39,496,600					
Cash.....	2,714,123	1,284,332	301,660	1,325,900	859,810	610,994
U.S. Government securities (par).....	15,212,000	1,632,000	1,757,000	2,338,000	2,371,000	2,595,000
Unamortized premium (or discount) (net).....	(154,069)	(30,431)	15,418	30,943	30,724	(21,056)
Total.....	16,057,631	1,601,569	1,772,418	2,468,943	2,401,724	2,573,944
Investment in Central Bank for Cooperatives.....		1,114,754	1,892,120	2,292,433	1,378,562	644,802
Dividends receivable on class B capital stock—Central Bank.....		1,500	6,300	6,000	3,000	1,600
Loans in process of liquidation.....			5,970	279,442	42,546	
Less reserve.....				50,000		
Net.....			5,970	229,442	42,546	
<b>Assets acquired in liquidation of loans:</b>						
Less reserve.....		78,643	62,150			3,359
Net.....		78,643	15,000			3,359



Fixed and other assets.....	631,297	134,874	110,000	237,854	211,450	134,098
Less provision for depreciation.....	25,178	5,410	34,147	30,047	35,187	29,010
Net.....	606,119	129,464	75,853	207,807	176,263	105,088
Total assets.....	181,721,117	99,600,745	34,373,743	30,408,413	55,033,546	24,079,072
<b>LIABILITIES</b>						
Unmatured consolidated debentures outstanding.....						
Less debentures owned.....						
Net.....	90,000,000	6,000,000	15,000,000	31,500,000	30,800,000	10,000,000
Notes payable.....	90,000,000	6,000,000	15,000,000	31,500,000	30,800,000	10,000,000
Commercial banks.....		900,000			1,000,000	
Other Farm Credit banks.....		1,500,000	2,625,000	1,525,000	2,025,000	1,400,000
Total.....	2,000,000	2,525,000	1,525,000	1,525,000	2,025,000	1,400,000
Accrued interest payable.....	698,785	60,882	137,739	296,319	283,991	54,645
Dividends payable on class B capital stock and guaranty fund.....	64,137	24,351	27,749	37,156	2,824	11,977
Federal franchise tax payable.....	698,118	93,186	108,923	131,173	121,264	43,754
Due U.S. Government—Retirement of class A capital stock.....	3,000,000	441,000	525,000	560,000	1,100,000	2,000,000
Other liabilities.....	127,415	142,577	54,692	103,190	16,426	104,796
Capital stock and guaranty fund:						
Class A—U.S. Government.....	36,000,000	4,807,400	6,316,100	4,200,000	4,000,000	5,270,000
Less in process of retirement.....	3,000,000	441,000	525,000	560,000	1,100,000	2,000,000
Net.....	33,000,000	4,366,400	5,791,100	4,000,000	2,900,000	4,880,000
Class B—Cooperative associations and others.....	2,137,000	812,692	634,953	928,970	900,400	399,562
Class C—District banks.....	16,861,453	3,065,797	4,517,353	3,008,568	5,632,013	2,651,348
Other—Cooperative associations.....		1,500	2,100	9,000	800	
Total.....	52,000,353	8,246,389	11,224,545	9,947,870	8,790,803	3,951,110
Surplus—Reserved.....	20,675,993	4,418,527	2,575,713	3,370,967	5,190,412	3,657,556
Surplus—Allocated to patrons.....	4,889,366	832,803	1,182,419	1,176,830	1,192,529	711,449
Total capital and surplus.....	87,164,702	13,517,719	14,992,730	13,488,173	14,964,041	12,380,447
Total liabilities.....	181,721,117	22,600,745	34,373,743	30,408,413	55,033,546	24,079,072

## Banks for Cooperatives

TABLE 44.—Statements of condition, June 30, 1963—Continued

ASSETS	St. Louis	St. Paul	Omaha	Wichita	Houston	Berkley	Spokane
Loans to cooperative associations:							
Commodity.....	\$19,811,561	\$7,911	\$1,321,082	\$5,085,776	\$1,927,077	\$8,812,785	9
Operating capital.....	29,675,911	65,636,212	20,768,319	22,611,214	12,396,207	65,587,222	\$21,734,478
Facility.....	47,137,501	21,628,658	17,136,019	57,786,581	27,648,952	37,116,831	14,867,950
Total.....	96,625,079	90,296,789	32,225,420	90,583,550	41,957,836	91,516,838	36,692,553
Long participation certificates outstanding.....	14,018,040	42,325,061	2,215,000	16,443,000	4,108,000	11,023,803	348,000
Net.....	82,607,039	47,971,728	30,010,420	74,140,550	37,849,836	79,897,135	35,713,323
Notes receivable and sales contracts.....		6,560		31,209			330,819
Accrued interest receivable on loans, notes receivable, and sales contracts.....	877,511	707,787	998,431	667,767	830,147	750,433	422,515
Total.....	83,484,550	48,685,754	30,911,871	80,542,410	38,687,983	80,387,587	36,418,653
Less reserve for loans.....	1,018,501	990,070	438,174	534,907	527,503	723,821	385,000
Net.....	82,466,049	47,695,684	30,473,697	80,007,503	37,800,382	79,616,766	36,034,653
Loans to other Farm Credit banks.....							
Cash.....	977,000	332,000	182,700	1,058,491	242,835	1,028,107	534,632
U.S. Government securities (par).....	2,077,000	2,404,000	1,528,000	2,887,000	2,421,000	2,070,000	2,546,000
Unamortized premium (or discount) (net).....	(12,714)	(18,562)	10,220	(29,210)	6,166	(30,638)	(32,117)
Total.....	2,064,286	2,425,438	1,548,220	2,866,080	2,427,166	2,073,469	2,513,882
Investments in Central Bank for Cooperatives.....	2,805,752	4,253,668	499,169	1,621,341	733,179	2,432,277	328,558
Dividends receivable on class B capital stock—Central Bank.....	12,700	12,801	1,300	10,500	1,800	6,600	1,800
Loans in progress of liquidation.....							30,293
Less reserve.....							
Net.....							32,563
Assets acquired in liquidation of loans.....				50,931		11,275	900
Less reserve.....				45,000		8,349	
Net.....				5,931	1	2,926	900

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Fitted and other assets.....	312,052	201,000	108,158	203,178	188,026	327,480	120,118
Less provision for depreciation.....	45,917	62,202	34,452	70,315	86,717	62,121	21,871
Net.....	266,135	138,798	73,706	132,863	101,311	265,359	98,247
Total assets.....	88,311,517	66,178,991	82,970,040	83,776,519	61,534,181	99,778,786	39,545,021
LIABILITIES							
Unmatured consolidated debentures outstanding.....	50,000,000	73,000,000	25,000,000	57,000,000	21,000,000	54,000,000	22,000,000
Less debentures owned.....				27,000,000			
Net.....	50,000,000	73,000,000	25,000,000	30,000,000	21,000,000	54,000,000	22,000,000
Notes payable.....							
Commercial banks.....	2,121,000			1,000,000	2,300,000	2,200,000	
Other Farm Credit banks.....	4,735,000	5,025,000	3,300,000	5,017,000	1,825,000	5,900,000	3,150,000
Total.....	6,856,000	5,025,000	3,300,000	6,017,000	4,025,000	8,100,000	3,150,000
Accrued interest payable.....	471,120	364,837	306,451	481,421	300,113	483,756	144,214
Dividends payable on class B capital stock and guaranty fund.....	32,830	46,132	22,333	20,916	20,243	36,298	4,500
Federal franchise tax payable.....	175,615	183,215	171,362	172,140	171,295	128,703	115,474
Due U.S. Government—Retirement of class A capital stock.....	1,628,000	1,215,000	718,000	1,100,000	1,000,000	1,000,000	620,430
Other liabilities.....	81,115	125,585	69,422	25,791	30,562	55,007	26,375
Capital stock and guaranty fund.....							
Class A—U.S. Government.....	3,900,000	6,440,000	4,000,000	4,015,000	4,000,000	4,200,000	4,200,000
Less in process of retirement.....	1,630,000	1,215,000	718,000	1,100,000	1,000,000	1,000,000	620,430
Net.....	2,270,000	5,225,000	3,282,000	2,915,000	3,000,000	3,200,000	3,579,570
Class B—Cooperative associations and others.....	1,800,000	1,388,770	743,100	2,379,400	841,500	780,758	95,622
Class C—District banks.....							
Class D—Cooperative associations.....	8,438,815	10,300,000	4,062,101	6,858,435	4,987,362	8,318,362	3,566,185
Other—Cooperative associations.....		4,100	15,100	1,000	200	10,000	8,400
Total.....	14,002,514	17,944,780	8,195,301	12,123,035	8,828,562	12,668,318	7,437,877
Surplus—Reserved.....	6,138,812	6,686,355	2,423,117	6,715,508	8,038,038	6,658,127	3,014,148
Surplus—Allocated to patrons.....	2,723,148	2,437,393	917,598	1,813,704	1,231,312	2,348,630	957,162
Total capital and surplus.....	22,864,474	26,100,841	11,536,006	20,552,247	18,115,912	21,626,065	13,439,142
Total liabilities.....	88,311,517	66,178,991	82,970,040	83,776,519	61,534,181	99,778,786	39,545,021

See notes table 42.

## Banks for Cooperatives

TABLE 45.—*Statements of earnings and earned surplus for the year ended June 30, 1963*

Item	Central Bank	Springfield	Baltimore	Columbia	Louisville	New Orleans
<b>Earnings:</b>						
Interest on loans to cooperative associations	\$7,051,725	\$918,348	\$1,420,933	\$1,527,803	\$5,315,319	\$1,009,830
Interest on notes receivable, sales contracts, and other	810,922	8,247	2,379	6,033	7,187	15,170
Income from investments	429,131	53,428	36,394	73,459	78,872	83,507
Other income		166,593	236,794	400,970	349,719	169,121
	8,301,677	1,177,554	1,716,390	2,308,441	5,750,777	1,318,318
<b>Deductions from earnings:</b>						
Interest and other costs of debentures	2,549,626	190,970	311,330	636,948	1,137,811	309,143
Interest on notes payable	275,731	89,376	95,435	64,189	120,200	131,020
Operating expenses	379,106	223,356	271,632	236,894	363,636	247,404
Provision for losses on loans, etc.	257,201	36,000	60,000	142,000	100,000	60,000
Other deductions (additions)	391,773	(14)	(573)		(11,818)	35,728
	4,903,436	577,611	637,934	1,101,628	1,813,165	782,338
<b>Net earnings for the year</b>	3,398,241	641,900	778,456	1,206,813	1,937,612	535,980
<b>Distribution of earnings:</b>						
Transferred to surplus allocated to patrons	568,174	107,675	191,647	276,621	369,303	133,440
Federal franchise tax	606,114	40,180	103,623	131,175	131,363	75,724
Dividends declared	64,178	27,351	27,749	37,168	3,825	11,987
Patronage refunds	1,934,216	365,358	317,207	661,591	734,819	312,730
	3,682,621	643,900	778,586	1,106,485	1,239,809	533,980

Item	St. Louis	St. Paul	Omaha	Wichita	Houston	Berkley	Spokane
<b>Earnings:</b>							
Interest on loans to cooperative associations	\$3,757,516	\$2,915,600	\$2,758,182	\$1,379,118	\$1,625,472	\$3,795,915	\$1,536,562
Interest on notes receivable, sales contracts, and other	28,390	8,511	2,972	33,143	19,374	9,315	17,363
Income from investments	63,603	72,692	41,900	60,541	69,503	81,374	79,718
Other income	914,810	1,347,615	64,726	296,176	298,017	478,922	67,127
	4,865,609	4,344,728	2,907,810	1,769,278	2,022,766	4,374,226	2,000,922
<b>Deductions from earnings:</b>							
Interest and other costs of debentures	1,809,517	1,236,546	1,665,159	1,556,714	608,648	1,875,192	747,098
Interest on notes payable	266,445	113,747	1,621,717	1,211,112	60,364	172,126	160,000
Operating expenses	339,764	378,794	320,229	508,418	211,825	343,916	221,227
Provision for losses on loans, etc.	141,060	381,000	9,000	17,600	24,000	120,000	120,000
Other deductions (additions)	17,000	33,000	43	41,150		27,728	27,728
	2,663,822	2,143,071	3,616,327	2,425,294	1,112,967	2,549,318	1,276,100
<b>Net earnings for the year</b>	2,191,777	2,199,657	730,000	1,424,984	909,799	1,824,908	724,822
<b>Distribution of earnings:</b>							
Transferred to surplus allocated to patrons	552,919	549,164	151,258	272,925	275,441	450,189	175,776
Federal franchise tax	175,635	183,235	174,384	172,140	121,000	178,202	117,412
Dividends declared	12,900	46,123	22,352	29,445	25,000	7,300	6,000
Patronage refunds	4,407,233	7,418,085	403,600	673,799	600,754	1,228,491	266,177
	2,211,677	2,196,607	751,594	1,107,909	1,122,195	1,863,982	765,365

## Banks for Cooperatives

TABLE 46.—Combined statements of earnings

Item	Year ended June 30, 1963	Year ended June 30, 1962
<b>Earnings:</b>		
Interest on loans to cooperative associations.....	\$34,513,962	\$32,171,261
Interest on notes receivable, sales contracts, and other.....	158,536	85,130
Income from investments.....	1,349,545	1,234,730
Other income.....	38,449	37,774
	<u>36,060,492</u>	<u>33,528,895</u>
<b>Deductions from earnings:</b>		
Interest and other costs of debentures.....	15,738,693	13,321,908
Interest on notes payable.....	1,036,528	1,394,915
Operating expense.....	3,619,735	3,577,364
Provision for losses on loans, etc.....	1,651,300	1,257,300
Other deductions.....	210,196	89,458
	<u>22,456,452</u>	<u>19,640,945</u>
<b>Net earnings for the year.....</b>	<u>13,604,040</u>	<u>13,887,950</u>
<b>Distribution of earnings:</b>		
Transferred to surplus allocated to patrons.....	2,128,249	3,956,196
Federal franchise tax.....	2,170,283	2,250,387
Dividends declared.....	372,936	405,611
Patronage refunds.....	8,932,572	7,275,726
<b>Total.....</b>	<u>13,604,040</u>	<u>13,887,950</u>

TABLE 47.—Combined statements of surplus

Item	Year ended June 30, 1963	Year ended June 30, 1962
Surplus reserved by statute.....	\$88,111,198	\$88,111,198
Surplus allocated to patrons:		
Balance, beginning of year.....	\$17,542,510	\$13,600,203
Transferred from net earnings.....	2,128,249	3,956,196
Retired.....	(29,844)	(13,889)
<b>Balance, end of year.....</b>	<u>19,640,915</u>	<u>17,542,510</u>
<b>Surplus, end of year.....</b>	<u>107,752,113</u>	<u>105,653,708</u>

**Banks for Cooperatives Investment Fund**  
*(Agricultural Marketing Act Revolving Fund)*

TABLE 48.—*Statements of condition*

ASSETS	June 30, 1962		June 30, 1962	
Cash with U.S. Treasury.....		\$55,162,500		\$43,153,000
Investments in capital stock:				
District banks for cooperatives.....	\$57,937,500		\$66,917,000	
Central Bank for Cooperatives.....	36,900,000	94,837,500	59,500,000	106,517,000
Total assets.....		150,000,000		150,000,000
<b>LIABILITIES</b>				
Capital.....		150,000,000		150,000,000
Total liabilities.....		150,000,000		150,000,000



## Defendant's Exhibit 2

## INVOICE

Telephone LD-9918

Inv. No. 35.90

ASSOCIATED COOPERATIVES, INC.

750 West Twentieth Avenue  
Sheffield, Alabama

Date: May 21, 1964.

To Mississippi Federated Cooperatives (AAL)

Post Office Box 449

Jackson 5, Mississippi

Remittance must be payable at par in New York exchange or it's  
equivalent to Associated Cooperatives, Inc.To bill your purchase of ACI stock in New Orleans Bank for  
Cooperatives as follows:B stock—par value, \$15,000.00. Purchased by agreement  
with Mr. H. L. Hodges, Vice President. \$15,000.00C stock—par value, \$27,411.31. Purchased by your bid of  
March 30, 1964. 12,000.00Certificates for the above stock were not issued by the Bank,  
as it was pledged as loan collateral and has been held pending  
this ACI liquidation sale.

TOTAL \$27,000.00

Paid 5-29-64, \$27,000, Ck. 02 1414.

CAUSE NO. 2113 &amp; 2114 CW

EXHIBIT 2-2 Evidence

WITNESS Hiram Polk

PAGES

Nov. 7, 1968,

United States District Court,

Southern District of Mississippi,

WILLIAM A. DAVIS, Reporter.

## Defendant's Exhibit 3

## STOCK IN NEW ORLEANS BANK FOR COOPERATIVES

Date	Voucher No.	Quantity	Description	Debits	Credits	Balance
Jul 22 63	OV 31		To rec NOBC class C stock patronage refund for year ended June 30, 1963.	58,026.97		400,711.50
Oct 16 63	16,542		New Orleans Bank for Co- ops—payment on interest on loans from July 1, 1963, to Oct. 1, 1963, class C stock.	11,682.24		412,393.74
Jan 15 64	18,066		New Orleans Bank for Coops.	14,234.24		426,627.98
Apr 15 64	19,528		New Orleans Bank for Coops Class C stock.	13,575.50		440,203.48
May 29 64	21,414		Associated Cooperatives Inc. B stock par values.	15,000.00		
May 29 64	21,414		C stock par values.	12,000.00		467,203.48
May 31 64	OV 437		To bring C stock purchased from Associated up to par.	15,408.39		482,611.87

## Defendant's Exhibit 4

NEW ORLEANS BANK FOR COOPERATIVES  
FIFTH FARM CREDIT DISTRICT, ALABAMA-MISSISSIPPI-  
LOUISIANA

P.O. Box 50072, NEW ORLEANS, LOUISIANA 70150.

May 20, 1964.

Mr. E. G. SPIVEY,

General Manager, Mississippi Federated Cooperatives (AAL),

P.O. Box 449,

Jackson 5, Mississippi

DEAR MR. SPIVEY: In accordance with instructions contained in your letter of May 19, and in accordance with the assignment by Associated Cooperatives, Inc., in their letter of May 18, we have made the following entries on our records:

150 shares of Class B stock of the bank, with a par value of \$100 per share in the name of Associated Cooperatives, Inc., has been cancelled and Class B stock in a like amount has been issued in the name of Mississippi Federated Cooperatives (AAL)

We will retain this Class B stock as automatic security for present loans due by Mississippi Federated Cooperatives (AAL), and this letter will serve as our receipt for the retention of this stock.

We are also marking our records to transfer \$27,411.31 of Class C stock in the bank, and \$9,274.79 of allocated surplus in the bank presently in the name of Associated Cooperatives, Inc., plus any accrued Class C patronage and allocated surplus for the fiscal year 6/30/64 from Associated Cooperatives, Inc. to Mississippi Federated Cooperatives (AAL). The accrued Class C patronage and allocated surplus for fiscal year 6/30/64 will be very minor since the interest on Associated's loans during that year amount to \$19.42 and we guess that the patronage and allocated surplus will not amount to more than 25 percent of this figure. We will furnish you the positive figure when we have closed our books for 6/30/64.

Very truly yours,

N. F. PENDLETON,  
President

NFP:fm

cc: H. L. Hodges (2)

L. J. Mauffray

## Defendant's Exhibit 5

RL-9888, 9889

No.	Item	Amount
(a)-----	Class A stock outstanding 6/30/58 (Attachment No. 1).	\$6,517,000.
(b)-----	Class A stock retired during year ending 6/30/58 (Attachment No. 2).	229,800.
(c)-----	Assume remainder of Class A stock is retired at rate retired in year ending 6/30/58: years to retire would be (a) divided by (b).	28.6 years.
(d)-----	Franchise tax paid in year ending 6/30/58 (Attach. No. 2).	\$50,101.
(e)-----	Adjustment for reduced franchise tax—\$50,101 divided by 5% equals \$1,002,020, the amount of Class A stock outstanding when interest rate determines amount of franchise tax. \$1,002,020 divided by \$229,800 equals 4.4 years the period affected by change in franchise tax. 4.4 years $\times$ \$50,101 $\times$ $\frac{1}{2}$ equals \$110,220, the franchise tax saved and applicable to retiring Class A stock. \$110,220 divided by \$229,800 equals the shortening of retiral period through application of franchise tax savings to retirement.	0.5 years.
Note: By formula the foregoing is developed as follows:		
$\frac{(d) \times 1/5\%}{(b)} \times \frac{(d)}{2} \times \frac{1}{(b)}$		
(f)-----	Years required to retire Class A stock: (c)—(e)	28.1 years.
(g)-----	Annual amount applicable to retirement of Class B and Class C stocks: \$229,800 plus \$50,101 franchise tax, or (b) plus (d).	\$279,901.
(h)-----	Class B stock outstanding 6/30/58 (Attachment No. 1).	360,666.
(i)-----	Years to retire Class B stock: (h) divided by (g)	1.3 years.
(j)-----	Class C stock outstanding plus allocated surplus 6/30/58 (Attachment No. 1).	\$700,850.
(k)-----	Years to retire Class C stock and pay out allocated surplus: (j) divided by (g).	2.5 years.
(l)-----	Years from 6/30/58 to retirement of Class C stock issued in year ending 6/30/58: (f) + (i) + (k).	31.9 years.
(m)-----	Annual rate for discounting back par value of Class C stock (l) years in future to 6/30/58.	12%.
(n)-----	Present value of \$1.00 at (m) rate of interest (l) number of years in the future.	\$0.0269.
(o)-----	Ratio of Class C stock issued plus surplus allocated year ending 6/30/58 to Class C stock alone (Attach. No. 2).	1.27.
(p)-----	Present value factor for \$1.00 multiplied by ratio of Class C stock plus allocated surplus to Class C stock alone: (n) $\times$ (o).	\$0.0342.
(q)-----	Estimated fair market value as of 6/30/58 of one \$100 par share of Class C stock issued in year ending 6/30/58: (p) $\times$ 100.	\$3.42.

BALANCE SHEET ITEMS

BANK FOR COOPERATIVES IN NEW ORLEANS						
Item	To 6/30/63	To 6/30/62	To 6/30/61	To 6/30/60	To 6/30/59	To 6/30/58
Loans Outstanding To Coops.	27,939,959	19,627,247	20,334,247	19,881,001	21,828,383	19,675,177
Participating Certif. Outstanding	7,170,320	3,052,811	2,221,723	3,110,193	4,665,758	332,600
Net	20,769,639	16,574,436	18,112,524	16,770,808	17,162,625	17,362,577
Capital Stock						
Class A	4,820,000	5,270,000	5,620,000	5,970,000	6,270,000	6,517,000
Class B	899,562	402,119	403,747	405,431	357,820	360,666
Class C	2,681,548	2,158,356	1,727,162	1,291,053	881,454	537,525
Total	7,966,110	7,830,475	7,753,009	7,666,484	7,553,300	7,490,132
Surplus-Reserved Allocated	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888	3,627,888
Total	711,949	571,958	463,455	348,274	254,470	163,325

FOR ALL THIRTEEN BANKS FOR COOPERATIVES

Loans Outstanding To Coops.	700,561,449	672,366,803	594,548,829	550,712,891	525,880,724	408,257,152
Participating Certif. Outstanding	13,261	18,367	-	-	-	-
Net	700,548,188	672,344,436	594,548,829	550,712,891	525,880,724	408,257,152
Capital Stock						
Class A	80,911,100	94,837,500	106,817,000	118,286,900	126,337,800	134,798,700
Class B	11,229,389	12,235,783	13,186,012	14,007,649	14,568,539	14,777,312
Class C	68,830,284	54,663,776	42,407,410	31,623,529	23,244,786	15,303,640
Other	32,300	89,500	178,400	253,443	411,337	571,474
Total	161,023,073	161,826,799	162,608,822	164,175,321	164,553,512	165,657,136
Surplus-Reserved Allocated to Patron	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198	88,111,198
Total	17,640,915	17,542,510	13,600,203	10,099,051	7,720,210	5,077,025

BALANCE SHEET ITEMSBANK FOR COOPERATIVES IN NEW ORLEANS

Item	To 6/30/57	To 6/30/56	Class C Stock Outstanding Plus Surplus	
			Allocated To Patrons	
			Year Ending	Total
Loans Outstanding To Coops.	\$12,207,957	\$9,513,942	June 30, 1956	\$114,351
Participating Certif. Outstanding	601,800	751,800		
Net	12,206,157	8,761,642	1957	382,325
Capital Stock			1958	700,850
Class A	6,746,800	6,728,100	1959	1,155,924
Class B	364,702	360,460	1960	1,639,327
Class C	287,863	86,590	1961	2,192,717
Corp. Other Assets	135,204	201,846	1962	2,736,314
Total	7,535,191	7,576,796	1963	3,392,197
Surplus-Reserve Allocated To Patrons	3,627,888	3,627,488		
	94,461	27,761		

FOR ALL THIRTEEN BANKS FOR COOPERATIVES

Loans Outstanding To Coops.	384,328,803	348,074,139
Participating Certif. Outstanding	2,790	6,532
Net	384,325,833	348,067,607
Capital Stock		
Class A	141,673,200	147,360,000
Class B	15,339,393	15,601,475
Class C	8,703,316	2,824,037
Corp. Other Assets	1,229,694	2,259,208
Total	166,945,613	168,044,520
Surplus-Reserve Allocated To Patrons	88,111,198	88,111,198
	2,755,071	977,094



BANK FOR COOPERATIVES IN NEW ORLEANSCHANGES IN CLASS A AND CLASS C STOCKS AND DISPOSITION  
OF SAVINGS, YEARS ENDING JUNE 30, 1957-1963

Year Ending	Class A Stock Retired	Class C Stock Issued	Surplus Allocated to Patrons	Franchise Tax	Dividends Paid	Patronage Refund
June 30, 1957	\$ 181,300	\$ 201,274	\$ 66,700	\$ 98,590		
1958	229,800	249,661	68,864	50,101		
1959	247,000	343,929	91,145	56,627	10,735	206,073
1960	300,000	409,599	93,204	60,543	11,826	221,644
1961	350,000	438,209	115,181	74,507	12,112	261,107
1962	350,000	429,074	114,503	75,233	12,063	256,409
1963	390,000	523,192	133,491	75,724	11,907	312,759
June 30, 1957 to 1963	Class C Stock Issued Plus Surplus Allocated	Ratio of Class C Stock Plus Allocated Surplus to Class C Stock Alone				
1957	\$ 267,974	1.33				
1958	318,525	1.27				
1959	435,074	1.27				
1960	503,403	1.24				
1961	553,390	1.32				
1962	543,597	1.30				
1963	656,683	1.26				

### INTEREST RATE ON U.S. GOVERNMENT SECURITIES

A long upward trend in interest rates commenced soon after end of World War II. Various explanations are given for local peaks and sags but the trend has been clearly evident. Annual interest rates (or yields) for U.S. Government securities have been:

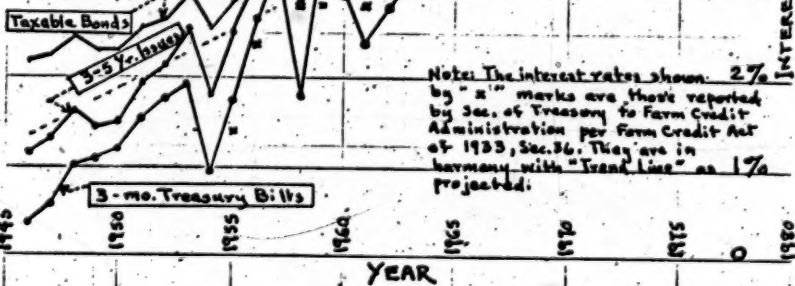
Year	3-mo. Treasury Bills	3-5 Year Issues	Taxable Bonds	Year	3-mo. Treasury Bills	3-5 Year Issues	Taxable Bonds
1946	0.375	1.16	2.19	1958	1.837	2.70	3.43
1947	0.594	1.32	2.25	1959	3.405	4.33	4.08
1948	1.040	1.62	2.44	1960	2.743	3.79	4.02
1949	1.102	1.43	2.31	1961	2.378	3.60	3.90
1950	1.218	1.50	2.32	1962	2.778	3.57	3.75
1951	1.532	1.93	2.57	1963	3.157	3.72	4.00
1952	1.766	2.13	2.68	1964	3.597	4.06	4.15
1953	1.731	2.56	2.74	1965	3.754	4.22	4.21
1954	0.753	1.82	2.55	1966	4.881	5.16	4.65
1955	1.753	2.50	2.84	1967	7.321	5.07	4.85
1956	2.658	3.12	3.08	4-12-68	5.309	5.48	5.21
1957	3.267	3.62	3.47				

Source: Economic Indicators, prepared for Joint Economic Committee, U.S. Congress

Besides the definitely upward trend the table reflects two more characteristics of interest rates on Treasury securities (and of money market rates in general):

(1) When interest rates are low—i.e., in period of money ease—the spread between rates for short and long term maturities is relatively large and this spread decreases as interest rates increase, and (2) in

times of very high interest rates, rates for short term maturities may be higher than rates for long term maturities of equal quality.



## ATTACHMENT No. 4

## Bank For Cooperatives In New Orleans

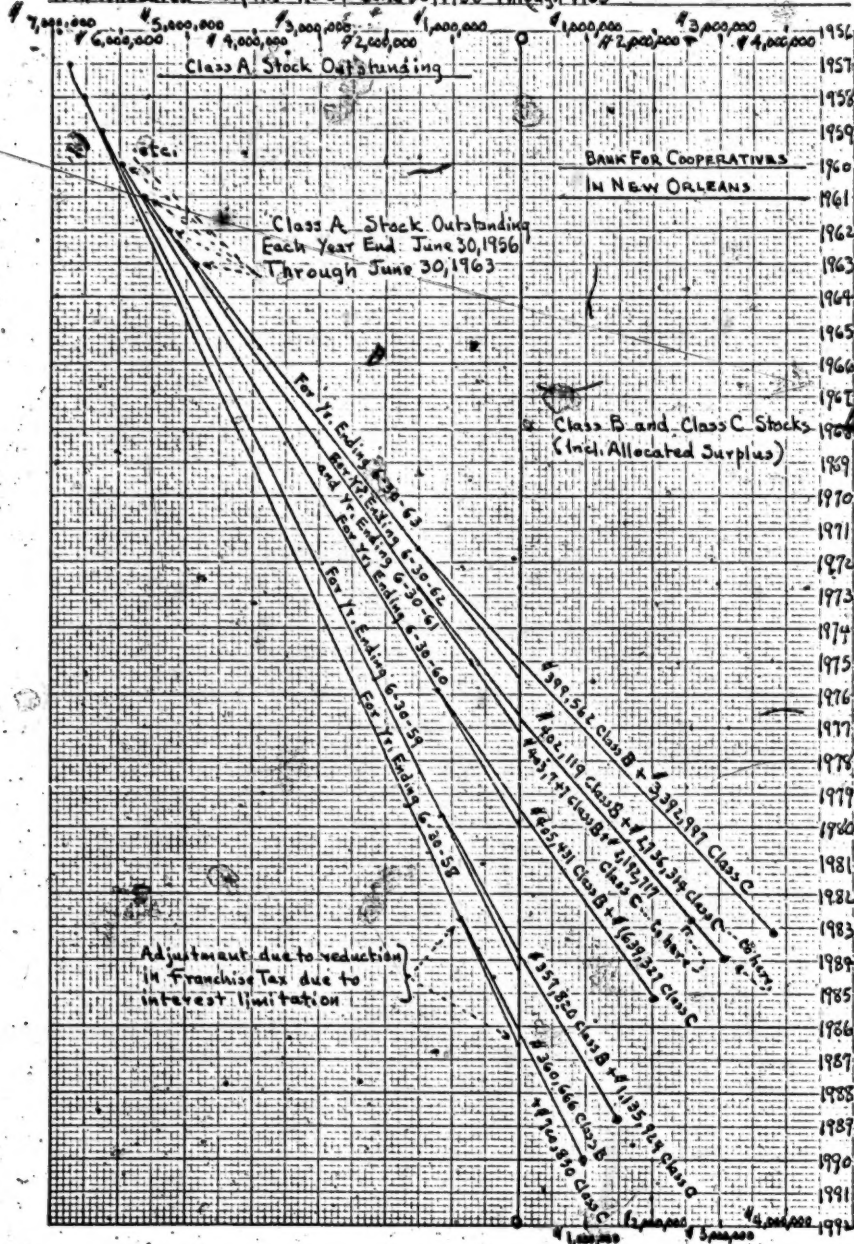
Tabulation Showing Certain Data Used In Arriving  
At Fair Market Value Estimates For Class C  
Stock Issued In Years Ending June 30, 1958 Through 1963.

Item No.	For Class C Stock Issued In Year Ending						
	6/30/58	6/30/59	6/30/60	6/30/61	6/30/62	6/30/63	
(a)	\$6,517,000	\$6,270,000	\$5,970,000	\$5,620,000	\$5,270,000	\$4,880,000	(ATTACH. No. 1)
(b)	\$227,800	\$247,000	\$300,000	\$350,000	\$350,000	\$370,000	(ATTACH. No. 2)
(c)	28.6 yrs.	25.3 yrs.	19.9 yrs.	16.1 yrs.	15.1 yrs.	12.5 yrs.	(a) ÷ (b)
(d)	\$50,101	\$56,627	\$60,543	\$74,507	\$75,233	\$75,724	(ATTACH. No. 2)
(e)	0.5 yrs.	0.5 yrs.	0.4 yrs.	0.5 yrs.	0.5 yrs.	0.4 yrs.	(d) × (c) ÷ (b)
(f)	28.1 yrs.	24.8 yrs.	19.5 yrs.	15.6 yrs.	14.6 yrs.	12.1 yrs.	(c) - (e)
(g)	\$279,901	\$303,627	\$360,543	\$424,507	\$425,233	\$465,724	(b) + (d)
(h)	\$364,666	\$357,820	\$405,431	\$403,747	\$402,119	\$377,562	(ATTACH. No. 1)
(i)	1.3 yrs.	1.2 yrs.	1.1 yrs.	1.0 yrs.	0.9 yrs.	0.9 yrs.	(h) ÷ (g)
(j)	\$700,850	\$1,135,724	\$1,639,327	\$2,172,717	\$2,736,314	\$3,372,777	(ATTACH. No. 1)
(k)	2.5 yrs.	3.7 yrs.	4.5 yrs.	5.2 yrs.	6.4 yrs.	7.3 yrs.	(j) ÷ (g)
(l)	31.9 yrs.	29.7 yrs.	25.1 yrs.	21.8 yrs.	21.9 yrs.	20.3 yrs.	(f) ÷ (i) + (k)
(m)	12%	10%	9%	8%	7%	6%	
(n)	\$0.0269	\$0.0290	\$0.1149	\$0.1268	\$0.2273	\$0.3065	
(o)	1.27	1.29	1.24	1.32	1.30	1.26	(ATTACH. No. 2)
(p)	\$0.0342	\$0.0750	\$0.1413	\$0.2465	\$0.2760	\$0.3865	(n) × (o)
(q)	\$3.42	\$7.50	\$14.13	\$24.65	\$29.60	\$38.65	(p) × 100

Item (q) is estimate of fair market values of Class C stocks issued in years ending June 30, 1958 through 1963, as of June 30, 1958 through 1963, respectively.

Note: Period of time during which franchise tax reduction due to interest limit (est. at 5%) contributes to revival of Class A stock is equal to  $[(d) ÷ 5\%] ÷ (b)$  in years, and period for years ending June 30, 1958 - 1963 is 3.8 yrs., 4.6 yrs., 4.0 yrs., 4.3 yrs., 4.3 yrs., and 3.9 yrs., respectively.

Chart Showing Estimated Trends For Retention Of All Class A, B, & C Stocks Outstanding And Allocated Surplus As Of June 30, 1958 Through 1963



8

## DEPOSITION OF WALTER C. VERLANDER

Q. What is a bank for cooperatives, Mr. Verlander?

A. A bank for cooperatives?

Q. Yes.

A. I would say it's a bank or institution, financial institution, that was set up under the Farm Credit Act of 1933 to finance eligible farmer cooperatives.

Q. Now how does a Bank for Cooperatives differ from a commercial bank?

9 A. It differs in, I would say, it has no cashiers, it takes no deposits, and in that respect it differs from a commercial bank, but it does make loans to borrowers.

Q. All right, sir. Now, if you will, will you please outline the chain of command in a Bank for Cooperatives, if you will.

A. In our bank?

Q. In the whole system of which the New Orleans Bank for Cooperatives is a part.

A. You mean the organizational structure for the entire Farm Credit System?

Q. Yes, very briefly. I don't mean for you to go into any great detail about that.

A. First, at the top you would have the Federal Farm Credit Board. It's composed of 13 men. Now, this Board, their primary responsibility of course is to hire and employ a chief administrator officer, and that chief administrator officer is the governor of farm credit. The governor has under him an assistant governor and a deputy director for each bank service,

10 that would be the Federal Land Bank the Federal Intermediate Credit Bank and the Bank for Cooperatives. That is the organizational structure, I would say,

at the National level. Now, the system is composed of 37 banks, that would be 12 regional land banks, 12 regional federal intermediate credit banks, and 12 regional Banks for Cooperatives and 1 central bank for cooperatives which is located in Washington, D.C. Now, at the regional level we have in this district a 7-man board of directors, and this 7-man board serves as a district board as well as the same board for each of the three banks that are housed in this district, and this board elects the President, and senior officers, other senior officers, to manage, if you want to use that term to manage the banks. Now, this is off the record.



(Discussion off the record.)

Q. As I understand it, Mr. Verlander, the District Farm Credit Board acts as a board of directors for the regional federal land bank, for the regional bank for cooperatives, and the regional production credit association, is that right?

11 A. The regional federal intermediate credit bank.

Q. Yes.

A. Rather than a production credit association.

Q. Now, how are the members of the district farm credit boards selected?

A. Our board at the present time is composed of 7 members, 2 are elected by the stockholders of the federal land bank association, 2 are elected by the stockholders of the Production Credit Association, 2 are elected by the eligible borrowers of the bank for cooperatives, the New Orleans Bank for Cooperatives, and 1 is appointed by the governor of the Farm Credit Administration.

Q. Now, you said, I believe, that is presently true.

A. Yes, sir.

Q. For how long has it been true? I am asking that now.

A. With regard to the Bank for Cooperatives, the New Orleans Bank for Cooperatives, in 1967 the stockholder borrowers of the bank became—could elect the second director.

Up until that time they could elect only 1 director.

12 Q. What happened, Mr. Verlander, that entitled the Bank for Cooperatives to elect an additional director?

A. The borrowers at that time acquired sufficient stock in the Bank to become eligible, to make that second director's selection.

Q. Now, when you say they obtained,—did you say the Cooperatives acquired sufficient stock?

A. Yes, sir.

Q. When you say that the Cooperatives acquired sufficient stock, what kind of stock do you refer to?

A. Two classes of stock that they can hold, and own, one of them is a Class B stock, and the other is a Class C stock in the Bank.

Mr. RANEY. Who elected the second director prior to 1967, this one that—

The WITNESS. You mean a second director in the Bank for Cooperatives?

Mr. RANEY. Right, sir.

- 13 The WITNESS. The other was—he was appointed at that time by the Governor of Farm Credit.

By Mr. WARREN:

Q. Is any officer, director, or stockholder of Mississippi Chemical Corporation or Coastal Chemical Corporation an officer or director of this Bank?

A. Yes, sir.

Q. And what is his name, please, sir?

A. Ernest Spivey, S-p-i-v-e-y, is a director, of Mississippi Chemical and Coastal, and he is also on our Board. There is also Mr. F. A. Graugnard is a director on Coastal's Board and he is also a director of our Bank.

Q. How do you spell that gentleman's last name, sir?

A. G-r-a-u-g-n-a-r-d, F. A.

Mr. WARREN. Off the record.

(Discussion off the record.)

By Mr. WARREN:

- Q. When, if you know, were these two gentlemen made directors of this Bank, or I assume when you say they are  
14 directors of this Bank, let me clear up that if there is any confusion about it. These two gentlemen that you refer to, that is Mr. Spivey and Mr. Graugnard: they are members of the District Farm Credit Board, is that correct?

A. That's right, the 5th Farm Credit District Board.

Q. When, if you know, did they become members of that Board?

A. I think it was Spivey, he has served on the Board for 10 years, if I recall properly, and I believe Mr. Graugnard has been on the Board 7 years.

Mr. WARREN. Off the record.

(Discussion off the record.)

By Mr. WARREN:

Q. You have stated, Mr. Verlander, how the members of the District Farm Credit Board are selected. Can you state how the national farm credit board is selected or how members of that Board are selected?

A. Do you mean the Federal Farm Credit Board?

Q. Yes, sir.

- 15 A. Our district would be a good example or starting point because the other districts follow the same procedure.

Q. All right.

A. The stockholders of the Federal Land Bank Associations will nominate an individual to serve on that Board from his district. The production credit associations will nominate a man to serve on that Board from his district. The Cooperatives Associations will also nominate a man to serve on that Board from his district. These 3 men then are reviewed by the President of the United States, and 1 of the 3 would be selected. Now, in cases where, let's say, the Bank for Cooperatives does not nominate a man, then he would only have a choice from 2, you see.

Q. Had it ever occurred that 1 of these 3 different kinds of Cooperatives did not nominate or propose the nomination of a member, propose the appointment of a member?

A. No. You said "oppose"?

Q. Propose.

A. Oh, no.

16 Q. Has a nominee of the Bank for Cooperatives of this district ever proposed a member of the National Board who was ultimately appointed to it, to the Board?

A. Would you repeat the question, please.

Q. In other words, all I have asked you is you stated that Banks for Cooperatives, of the Cooperatives, propose 1 member of the Board. That is right, isn't it?

A. They propose a man, they nominate a man, right.

Q. For the President's consideration?

A. Yes, sir.

Q. Has the man proposed by the Cooperatives ever been appointed as a member of the Federal Farm Credit Board?

A. From our district?

Q. Yes.

A. No.

19 Q. Has the Farm Credit Administration promulgated rules regulating the circumstances under which loans could be made by the Bank to individual borrowers?

20 A. We have certain eligibility requirements that borrowers will have to meet in order to obtain a loan from the bank.

Q. Are those eligibility requirements set down in writing somewhere?

A. Yes, they are.

Q. What is that called?

A. It is the Agricultural Marketing Act.

Q. Has the Farm Credit Administration or any other agency or department of the United States issued regulations relating to eligibility requirements for making loans and for the operation of banks for cooperatives generally?

A. The Farm Credit Administration has picked up the eligibility requirements that are spelled out under the Agricultural Marketing Act as amended. Now, as to the operations of the banks, yes, we have a manual that covers certain operational areas in the bank. Those would be the regulations that you referred to.

Q. Who put out the manual?

A. The Farm Credit Administration.

Q. The New Orleans Bank for Cooperatives follows this manual as a policy matter in making loans, does it, Mr.

21 Verlander?

A. It follows the manual in all of the areas, operational areas, that are covered.

23 Q. It is true, is it not, Mr. Verlander, that in order  
for a qualified borrower to borrow money or to obtain the  
agreement of the Bank to loan money, the borrower  
24 must agree to purchase certain—a certain amount of  
Class C stock of the bank?

A. In order to qualify for a loan, the borrower must acquire 1 qualifying share of Class C stock, par value \$100, then as the condition of the loan proceeds, he acquires additional C stock through quarterly investments.

Q. How is the amount of the Class C stock that the borrower is required to acquire determined?

A. Our interest override amounts to 10% of the interest paid at this time, but at the time that Mississippi Chemical and Coastal Chemical were purchasing this stock in 1961, 1962, and 1963, the interest override amounted to 15% of the interest paid.

Q. Now, when you say, "interest override," what do you mean by that Mr. Verlander?

A. Well, this is the cash money that a cooperative pays into the Bank for C stock. It also gets additional C stock from patronage, but that is something else.

Q. When you use the term "interest override" do you mean to indicate that the amount of money that is paid in  
25 to acquire Class C stock is increased?

A. No, it is determined, the amount of money is determined by the amount of interest that was paid, and, for example, if the Cooperative was billed at the end of the year for \$1,000 of interest, it would also be billed for, at that time, \$150 of—billed for that amount \$150 which would be used to purchase this required C stock investment in the Bank.

Q. Is this term "interest override" to your knowledge used in any of the applications to Banks for Cooperatives or any regulations thereunder are in any manual issued by the Farm Credit Board or Farm Credit Administration?

A. No, we refer to it in our district this way.

Q. Now, you have said that the percentage of interest that was required to be used to pay for Class C stock was 15% during the years—

A. Yes.

Q. Now how was that 15% arrived at? As I understand it, a Bank for Cooperatives may determine that amount,  
26 determine that the amount of the purchase of Class C stock may vary from 10 to 25%. Is that correct?

A. That is correct.

Q. And you said, so far as the New Orleans Bank for Cooperatives was concerned, the percentage was 15%?

A. Yes, sir.

Q. During 1961, 1962, and '63?

A. Yes, sir.

Q. My question to you is how was that 15% arrived at?

A. It was arrived at after the Board made its policy determination as to how long a period of time it wished to take to retire the Government Class A stock, they then determined or made a policy determination to select an override, this 15% override, on a basis of meeting that goal for retirement of Government capital.

Q. When was the first time that the District Farm Credit Board made a policy decision as to when Government Class A stock should be retired in the case of the New Orleans Bank for Cooperatives?

A. Immediately when the Farm Credit Act was  
27 amended.

Q. That is 1955?



A. In 1956, when it went into effect.

Q. You have been good enough to get out the minutes of the Board of Directors for me. To your knowledge, would the policy determination as to the length of time it would be required to pay off or retire the Class A stock be reflected in those minutes someplace?

A. Yes, sir, it would, but I think the fixed schedule for retirement of Government capital came a few years—a little time later than when the Act went immediately into effect.

Q. Now what was the approximate time lapse, if you know?

Mr. SATTERFIELD. Off the record.

(Discussion off the record.)

By Mr. WARREN:

Q. When did the thing become effective, do you recall right offhand, when did the—

A. January 1, 1956.

Q. We are talking about the 1955 amendments which  
28 became effective as of—

A. January 1, 1956.

Mr. SATTERFIELD. Off the record.

(Discussion off the record.)

The WITNESS. May 20, 1959.

By Mr. WARREN:

Q. Was May 20, 1959, the first time that the District Farm Credit Board made a policy determination as to the length of time it would take to retire the Class A stock of this bank?

A. I would say that was the first time that it was reduced to a fixed schedule, yes, or a plan that would be in black and white. Up until that time it was oral, not reduced to writing.

Q. I believe that that resolution indicates that as a policy matter the Board indicated that the stock should be retired in about 20 years, is that correct?

A. That is correct.

Q. Under the basic Act, as I understand it, while the  
29 District Farm Credit Board was authorized to determine the percentage of interest that would be used to—for the purpose of Class C stock, the Farm Credit Administration reserved the right to approve that percentage, did it not, Mr. Verlander?

A. Yes, sir.

30 Q. Has the New Orleans Bank for Cooperatives had occasion to acquire Class C stock of the Central Bank for Cooperatives?

A. Yes.

Q. Under what circumstances, please, sir?

A. C stock as distributed to our bank since the Central Bank operates as a Cooperative and we share in any earnings distribution of the bank, and that earnings distribution has been in the form of C stock.

31 Q. At sometime did the New Orleans Bank for Cooperatives have to buy Class C stock of the Central Bank for Cooperatives?

A. Yes, sir.

Q. Why did it have to buy such stock?

A. We bought stock in the Central Bank so that it can retire the Government capital in its bank.

Q. Has the New Orleans Bank for Cooperatives received patronage dividends from the Central Bank for Cooperatives in the form of C stock?

A. Yes, sir.

Q. Is the New Orleans Bank for Cooperatives accountable to the Farm Credit Administration or some other Federal Department or agency?

A. Well, —

Q. That is a pretty wide question, but is the Bank required to file financial statements and other reports with some other — with some agency or department of the Federal Government?

A. We filed financial reports periodically with  
32 the Farm Credit Administration. We also have a resident examiner in the Bank that checks on the financial condition of the Bank regularly.

Q. Without going into complete detail, what sort of financial statements and reports does this bank file with the Farm Credit Administration?

A. Financial and operating statements, balance sheets, operations statements.

Q. Does it do that on a monthly basis?

A. Yes, sir.

Q. It's not done more frequently than monthly, is it?

A. Some records are daily on loan transactions; sir, with the Farm Credit and the Central Bank.

33 Q. Let me try to make it a little bit simpler. That is a little wordy, I agree. You have stated previously that this Bank purchased Class C stock from the Central Bank for Cooperatives, did you not, sir?

A. Yes, sir.

Q. Did this Bank in reports filed with the Farm Credit Administration deduct the cost of that stock as an operating expense?

A. No.

Q. Did it deduct it as interest?

A. No.

Q. Did it deduct it as a loss entered into for profit?

A. No.

Q. Were the amounts paid to this Bank, its borrowers for Class C stock included as interest income in any financial statements filed by this Bank with the Farm Credit Administration?

A. You mean the quarterly investment in C stock?

Q. Yes.

A. No.

Q. Has the Farm Credit Administration or any other Federal agency or department, so far as you know, issued instructions, rules or regulations as to how such items should be treated on these financial statements?

34

A. No.

Q. Then—

A. Wait a minute now. Let's clarify the question a little bit. This is with regard to the borrowers, right?

Q. No, sir, the question was directed to two things, first of all this Bank bought C stock from the central bank for co-operatives, and I believe you stated that the cost of that C stock that this Bank acquired from the Central Bank was not deducted as an operating expense. That is one aspect of the question. On the other hand I believe you also stated the interest, what you referred to as interest override, I asked you if in any of the these financial reports filed with the Farm Credit Administration whether that amount was included as interest income. I think your answer to that was no. I then asked

35

you if there were any rules or regulations telling you how you had to handle it and I think you said the answer to that was no. My summary has been fair so far?

A. Fair.

Q. Now, the next question is who made the decision as to how these sorts of transactions would be handled on the financial records submitted to the Farm Credit Administration?

A. I would think you had better ask our Treasurer that question, but I would say that what is covered in our manual as to also the accounting procedures for the operation of the Bank as sent down to us by Farm Credit, we followed those standard accounting procedures which would include the handling of some accounts.

Q. So far as you know, Mr. Verlander, and I realize perhaps you don't get into all of this detail in your office, but as I understand your answer it was treated according to the provisions of the manual or according to the standard accounting procedures. Is that correct?

A. Yes, sir.

36 Q. As you no doubt know, Mr. Verlander, the statutory provisions setting up the Banks of Cooperatives provide that in certain instances Class B stock may be converted into Class C stock in order to meet the requirements of the purchase of Class C stock.

A. Yes.

Q. Has any borrower of this Bank, to your knowledge, ever converted Class B stock to Class C stock?

A. Many of them.

Q. Was the conversion on a dollar for dollar basis?

A. The conversion was to meet the amount of the interest override or quarterly investment.

Q. Yes, I understand that, but the Class B stock, as I understand it, is issued at par, and par is described as being \$100. Is that correct?

A. Yes, sir.

Q. Now, Class C stock is also issued at \$100 par. Is that not correct?

A. We don't issue the C stock as such, no.

Q. When you say—

37 A. We have no certificate that we issue. We make this a credit on the books of the Bank, this investment.

Q. Well, at what rate do you credit it?

A. Dollar for dollar.

Q. You say the Bank does not actually issue Class C stock certificates?

A. That is correct.

Q. In making credit to the accounts of the various borrowers, does it credit the borrower with \$100 when it obtains a—

A. When it has paid that amount in, yes.

Q. Or obtains a patronage refund, is that not correct also?

A. That is correct, but we are only talking about conversion for actual purchase of C stock in the Bank, that is, conversion of B to C.

Q. All right sir, but the rest of my question is this: if an individual borrower owned one class or one share of Class B stock, and he converted it for purposes of meeting the loan requirements, what dollar value in terms of Class C stock would be assigned to the C stock after the conversion?

A. \$100.

38 Q. Was that true in 1961, 1962, and 1963?

A. Yes, sir.

Q. Is there any written policy requiring the conversion on a dollar for dollar basis that might be found in the Board of Directors minutes or in the manual, I suspect, or perhaps elsewhere?

A. Well, in the Bank's by-laws that it provides for conversion from B to C stock.

Q. Of course we can look at the by-laws, but does it—do the by-laws provide that it shall be converted on a dollar for dollar basis?

A. Yes, yes, I would say so.

Q. Does the Bank that is the New Orleans Bank for Cooperatives, does the Bank maintain a reserve of some sort for losses that might be sustained on loans to borrowers?

A. Yes.

Q. How is the amount of that reserve determined?

A. We have a reserve policy that we automatically charge monthly operations. Right at the present time, it's \$10,000 a month.

Q. Without respect to the amount of the outstanding loans?

39 A. This is on the present outstanding loans, yes. At the time of '61, '62 and '63 we had a different rate of reserve for take out each month.

Q. Do you recall what the rate was?

A. I believe it was \$5,000 per month.



Q. Now how was that amount determined, though, Mr. Verlander?

A. Based on the outstanding loans.

Q. Was it based on experience of losses?

A. Loss experience would enter into it, yes.

Q. What other factors entered into this?

A. The current classifications of the loan, the economic conditions that you face, these would have a bearing on what the monthly charge would be.

Q. You said, I believe, at least in part the amount of the reserve was determined by experience, at least in part?

A. Yes, sir.

Q. In that connection has the New Orleans Bank for Cooperatives sustained losses from borrowers on account of defaulting in payment of loans?

A. Yes, I would say that our loss experience is higher  
40 than other district banks.

Q. In those cases where the bank has sustained losses, what action if any did the bank take to minimize the extent of its loss?

A. Well, of course, you never want to take a loss if you can help it.

Q. Of course.

A. And we worked with a borrower constantly to minimize this. When we see one developing, when we see a borrower in trouble, we work with a borrower.

Q. But when you work with him to no avail and it becomes apparent that the borrower is not going to meet his obligation, what does the Bank do or what has been done?

A. When all hope is lost, is that what you mean?

Q. Yes.

A. Well, there is only one thing you can do then, that is to foreclose and try to collect your loans or else try to get a sale or a merger, anything to—even a salvage position.

Q. Have you experienced a situation where you had to go  
to salvage and get what you could out of a loan?

41 A. Yes, sir.

Q. When you had to go into one of these salvage operations, I would assume that the bank looks to the collateral security pledged for the loan. Is that right?

A. Yes.

Q. As a policy matter in making the loan to borrowers, what security does the Bank require?

A. Our policy is to get all the security we can get, and we would like to have our loans fully secured.

Q. Do you have any policy as to minimum security requirements, and if so what are they or what were they during the years in question here, 1961, '62 and '63?

A. On term loans, facility loans, we have to get a first mortgage security on the property. On operating loans—they may be secured by various assets or unsecured.

Q. I believe there are three types of loans which the Banks or Cooperatives makes, is that right?

A. At that time we had three types.

Q. What were those three types?

42 A. Commodity loans.

Q. What does that mean, a commodity loan, what is the borrower borrowing the money for?

A. He is borrowing the money for a short period of time to finance, for example, a bale of cotton in a warehouse, or soy beans in storage, in an elevator, or fertilizer inventory in a warehouse, all of those products would be eligible for a commodity loan, but the loan would be made and the commodity would secure the loan. There may be some other security in addition to that, but primarily the commodity.

Q. Would the commodity itself be the minimum security requirement?

A. Yes, sir. Then we had the operating loans, and these operating loans would be secured by inventories, accounts receivable, factors lien on inventories or there may be an operating loss loan which may be unsecured depending on the financial strength and the balance sheet of the borrower. Facility loans, we covered those previously.

43 Q. A facility loan, as I understand it, if an individual wanted to expand a plant, he could get a facility loan and the building itself would be security for the loan. Is that basically correct?

A. The land and building or buildings and what you would call the machinery and equipment that would be of a fixed nature, not movable.

Q. I understand. It is my understanding that Mississippi Chemical Corporation and Coastal Chemical Corporation borrowed money from this Bank during 1961, '62, and '63?

A. Yes, sir.

Q. Would the amounts of money that these corporations borrowed from the Bank in those years fall into one of the three categories, and if so which one?

A. It would fall into two categories.

Q. Which are they?

A. Facility and operating.

Q. Were the operating loans obtained by those two corporations secured or unsecured?

A. Secured.

Q. What about the facility loans?

A. Secured also.

44 Q. What type of security was pledged for the loan or given for the loan, the facility I assume would be—

A. ~~The~~ properties.

Q. It would fall under the term that you just explained?

A. Yes.

Q. Has this Bank ever accepted collateral for a loan of any sort Class C stock owned by the borrower?

A. As collateral for a loan?

Q. Yes.

A. No.

Q. Now, you have stated that there have been occasions when the Bank was unable to—

A. We have a lien on the stock, though, is that what you mean?

Q. No.

A. When we make a loan, if the borrower owns C stock, we have an automatic lien on that stock.

Q. A statutory lien on that stock, do you not?

A. Yes, sir.

Q. But the question on that particular point was has the Bank ever collateralized a loan on the basis of Class C stock alone?

A. No.

45 Q. Now, you stated that the Bank has run into loss situations on occasions.

A. Yes, sir.

Q. What it did, I assume, it did what it could to recover or minimize the losses?

A. Yes, sir.

Q. In doing that, has the Bank ever gone against Class C stock that was pledged as collateral for the loan?

A. Yes, sir; we have offset.

Q. You have stated that the Bank has gone against Class C stock pledged as security for loan?

A. Yes.

Q. You have also stated, I believe, that the Bank has not made loans on the basis of Class C stock alone.

A. That is correct.

Q. So it would appear that the Bank has had an election to go against Class C stock or other security?

A. Yes.

Q. Has it had that election in those situations?

A. Just in the case of default.

Q. Now, in those cases of default, what security did  
46 the Bank in fact go against first?

A. The prime security behind the loan.

Q. But you say it has gone against—

A. You said first.

Q. Yes, I understand.

A. We always go to the prime security first.

Q. But you say it has also gone against the Class C stock?

A. When the amounts collected and applied against the loan were not sufficient to liquidate it fully.

Q. In the case where you did go against the Class C stock, to what extent did you credit the borrower with the Class C stock which you went against?

A. Dollar for dollar.

Q. Describe the record or records of the Bank that would reflect the handling of a defaulting borrower.

(Discussion off the record.)

The WITNESS: It would have to be the stock record of the Bank.

By Mr. WARREN:

Q. Would any stock records of the bank indicate that  
47 the borrower, the defaulting borrower's credit had been reversed out for the purpose of applying that credit to his loan?

A. Yes.

Q. You said earlier that the Bank has not physically delivered to borrowers Class C stock purchase as a condition to making a loan initially or purchased as a "interest override"

or as patronage dividends. What evidence of stock ownership did the Bank provide the borrower with, when did it provide the borrower with that evidence?

A. We provided it with notification each year by letter of their ownership status or investment status.

Q. In Class C stock?

A. In Class C stock.

Q. Did I understand you also to say that the Bank had not issued a certificate of Class C stock to indicate that the borrower had met his initial eligibility requirement?

A. That is correct.

Q. Why didn't the Bank issue actual certificates of Class C stock, Mr. Verlander?

48 A. Because our Board has never adopted a form of certificate and it's not required.

Q. How do the interest rate charge borrowers the New Orleans Bank for Cooperatives compare with commercial rates of interest?

A. I would say comparable.

Q. How then does the New Orleans Bank for Cooperatives compete with commercial banks in lending money?

A. Through other services that we offer in the field of management, advice and counsel and financial management.

Q. Do you mean by that that you have a staff of or some individuals at least who go into the field to aid and assist borrowers in setting up their financial matters?

A. Yes, attend their Board meetings when requested, advise with them when requested.

Q. Does the Bank render advice to its borrowers on the question of mergers and consolidations?

A. Yes, and in a few cases we had in this district.

Q. And do they also advise the borrower of the feasibility of plans to expand the borrowers business?

A. Yes.

49 Q. Now, does the Bank give advice to cooperatives as to how they may efficiently meet competition in their businesses?

A. Yes, I would say that, in those cases where they were qualified.

Q. Has there been a borrower of this Bank which liquidated or dissolved during the period when that borrower owned Class C stock of this Bank?



A. Yes.

Q. When a particular borrower liquidated or dissolved, how did the Bank handle the retirement if it did retire of that borrower's Class C stock?

A. We have not retired any C stock except by offset against defaulting borrowers.

Q. Has the District Board made a policy determination as to what it would do or what should be done in those situations where you have a borrower to liquidate or dissolve?

A. It has taken the position not to retire Class C stock, except they want to review each case and see how it stands. Of course, the manual gives us leeway on this, but our Board has taken a stand that it wants to look at each individual situation.

Q. And in those situations where the problem has been presented to the Board, the Board has decided against it?

A. As a matter of policy, yes.

Q. Decided against retiring the Class C stock of the dissolved or liquidated borrower?

A. Yes.

Q. Is that policy reflected in the minutes of the Board?

A. In each case that is presented.

Q. The Board made a decision as to whether it would credit or pay the—

A. You didn't ask, you didn't ask about the automatic as the offset.

Q. When a borrower liquidates or dissolves, the Board has never seen fit to retire that dissolved or liquidated borrower's Class C stock. Is that correct?

A. That is right.

Mr. SATTERFIELD. You are talking about where there is no default, are you not?

Mr. WARREN. Not necessarily.

51 By Mr. WARREN:

Q. I believe the answer is the New Orleans Bank for Cooperatives has never retired Class C stock except perhaps in the case where there has been a defaulting borrower.

A. Yes.

Q. So far as you know, what are the factors that are to be taken into consideration in determining the extent to which the Bank will retire Class A stock?

A. The factors, the factors that determine the amount we will retire each year?

Q. Yes.

A. Earnings, the amount of stock that is purchased by co-operatives during the year, whether or not if we had an impairment of capital that would throw us off schedule, and I might add that we haven't had that up to now, and the amount of losses. As I say, if you had a large loss that is sustained, it would affect it.

Q. Would the amount of franchise tax required to be paid to the Federal Government be of a factor?

A. Yes.

10 TRANSCRIPT OF TESTIMONY TAKEN NOVEMBER 7, 1968

May it please the Court, we now call Mr. Walter C.

11 Verlander, Jr., President of the New Orleans Bank for Cooperatives, as a witness for the Plaintiff.

Walter C. Verlander, Jr., Called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

#### DIRECT EXAMINATION

By Mr. SATTERFIELD:

Q. One question only; for how many years have you been with the New Orleans Bank for Cooperatives?

A. 22 years.

Q. Mr. Verlander, there has been introduced an extensive stipulation in this matter; I would like to ask you some questions which are pertinent to the issues herein formed and in relation, generally, to the stipulation. Mr. Verlander, this matter uh chiefly involves the question of what is referred to as Class C Stock in the New Orleans Bank for Cooperatives. It particularly involves the question of the fair  
12 market value thereof. I will ask you whether at any time, to your knowledge, the New Orleans Bank for Cooperatives has sold it's C Stock to a purchaser other than in connection with or as a part of the so-called investment over-ride related to the interest paid by a borrower from the bank, or in relation to patronage refunds declared by the New Orleans Bank for Cooperatives?

A. No, it hasn't.

Q. Uh has the uh bank, and I refer to it simply as the bank, to your knowledge ever actually issued any certificates of Class C stock?

A. No, the bank hasn't issued any certificates.

Q. Now it is, uh in connection with loans by the bank to it's borrowers, would you state whether or not the bank gives any collateral value to the Class C. Stock which has been uh declared to such borrower, or which has been entered in your records in connection with the so-called interest over-ride?

A. No, we give no collateral value to the stock.

Q. Then in connection with the security required to obtain a loan that is other certificate other than such stock, is it not?

A. Yes sir, we take other security.

Q. However, in connection with such loans and as a  
13 part thereof, does the bank uh maintain a first lien upon such C stock uh declared by the bank to the borrower?

A. Yes, we have a statutory lien on the stock.

Q. To your knowledge, at any time has the bank released such lien to uh from, has the bank released such lien while there was outstanding an indebtedness from such borrower to the bank?

A. No.

Q. Now in the organization of the bank and it's by-laws, are there any provisions for stockholder's meetings to be held?

A. We have no provision for, in the by-laws for stockholder's meetings.

Q. Do you occasionally have——

A. We do have meetings though uh with uh our borrowers. We call them annual stockholder's meetings but it's merely reporting on the activities of the bank.

By Mr. WARREN:

14 Q. Then these, these meetings annually with your stockholders in the several states are for the purpose of reporting and information, are they not?

A. We report information on the bank to the stockholders.

20 Q. Now what interest spread is involved, or was involved in uh arriving at what is already in evidence, the contemplated or proposed basis of retainment of the Class

A Stock held by the Government? What generally, what size spread was that referred to, or related to?

A. Currently, or do you mean—

Q. Generally, just just give the Court a picture over a period of years?

A. Well at the time uh uh when we began retiring this Government capital in 1956 and we set up a program for retirement of the Government capital over a period of twenty years, we contemplated at that time a spread of about 1%.

21 Q. That's called a hundred points or 1%?

A. That would be a hundred points uh in market terminology.

Q. Has that been reduced or increased? What is the present situation then as it developed over the years?

A. Due to, it has shrunk quite a bit over the course of the years.

Q. To what uh spread has it shrunk? How many points difference is that at the present time?

A. Last month it was 22 points.

Q. Is that—

A. That's less than one-quarter.

By Mr. WARREN:

24 Q. Now Mr. Verlander, the evidence shows there is a statutory requirement for the retirement of Class uh A Stock held by the Federal Government. Has the New Orleans Bank for Cooperatives ever retired any Class C Stock other than in connection with liquidations, bankruptcies and so forth?

A. In the case of uh a borrower who's indebtedness is in default, we would apply it against that indebtedness if the primary security was not sufficient to cover uh the indebtedness.

Q. And other than in such type of liquidations, have you ever retired Class C Stock and paid it uh off at par?

A. No.

28 By Mr. SATTERFIELD:

Q. When the, the Class A Stock held by the Federal Government is uh retired, what effect, if any, would the requirement, would the removal of the exemptions of the bank from the payment of Federal Income Taxes, Franchise Taxes,

29 State Taxes and other taxes have upon the rate and extent of retirement of Class C Stock?

A. It would have an effect on the uh time span of redeeming this Class C Stock.

Q. And what would be that effect with reference to prolonging it or otherwise—

A. It would prolong it to some extent but I couldn't peg it down to any definite year.

Q. In fact, it would be impossible to determine the exact effect—

Q. Are you able, at this time, to determine the exact effect of the imposition of such taxes?

A. No, because we don't know the extent of our State uh Taxes.

Q. I see, thank you. Now Mr. Verlander, there has been into the record, the various facts concerning the restrictions upon Class C Stock, it's use, it's transfer, etc., which we will not review, it's already in the record. Uh in your opinion, does the Class C Stock of the New Orleans Bank for Cooperatives have a fair market value—

30

31 By The WITNESS:

In my opinion, it has no fair market value.

By Mr. SATTERFIELD:

32 By Mr. SATTERFIELD:

Q. Now Mr. Verlander, in connection with the use as related to the value, certainly the question is as to the use of Class C Stock. In relation to the interest over-ride of the payment of 15% of the amount of interest payable by a borrower on a quarterly basis, does the New Orleans Bank for Cooperatives permit Class C Stock to be purchased by one cooperative from another cooperative and then used in lieu of paying cash to the bank for the interest over-ride?

A. Uh no, we have not had that occasion.

Q. Have you ever permitted that to be done?

A. No.

Q. Do you permit a borrower who has accumulated C Stock on your books through borrowing in previous years, to use any portion of that C Stock as uh payment of the interest over-



ride in lieu of cash? Where one borrower has accumulated C Stock on your books in former years, do you permit that borrower to use that C Stock to pay the interest over-ride or do you require it to be paid in cash?

33 A. Require the borrower to pay it in cash.

### CROSS EXAMINATION

By Mr. WARREN:

Q. Mr. Verlander, in your opinion is the stock referred to as interest over-ride stock or C Stock?

A. No answer.

Q. Capital stock of the New Orleans Bank for Cooperatives?

A. Yes.

Q. You have stated on direct examination that no collateral value was given to uh C Stock owned by borrower from the bank, is that correct?

A. That's correct.

By the COURT:

Let me ask him this question——

By the WITNESS:

We have given it no value. When the, a borrower comes into the bank to borrow, applies for a loan, we examine it's credit base and we give no collateral value to C Stock.

34

By Mr. WARREN:

Q. Mr. Verlander——

By the COURT:

You stated that you didn't think that the C Stock of this bank had any market value——

By the WITNESS:

Any fair market value.

By the COURT:

Would you say that it had any value?

By the WITNESS:

I, I would say yes.

By the COURT:

You wouldn't say it was worthless, would you?

By the WITNESS:

I would say it has a market, I mean a value.

By the COURT:

But not a market value in that's it's not traded——

By the WITNESS:

That's right.

By the COURT:

But you would say that it had a fair value, wouldn't you?

By the WITNESS:

I would say that it has value, it has worth.

35 By the COURT:

What would you say is the worth of one share?

By the WITNESS:

I would have no way of determining the worth.

By the COURT:

Just because you haven't seen it traded?

By the WITNESS:

If I were a cooperative, I don't know how I could arrive at that.

By the COURT:

Well of course, value is not determined by what it's worth to the owner. I'm talking about what it may be worth to somebody else who needs it real badly but it's value is what amount of money could be realized from sale of a property by someone who had it and was willing to sell it but didn't have to sell it to some one who was willing to buy it but didn't have to have it.

By the WITNESS:

That would be my understanding of the fair market value. Where a willing seller and a willing buyer who would pay (inaudible).

By the COURT:

Well that would be value as well as market value, wouldn't it?

36 By the WITNESS:

But I, I don't know what anyone would uh be willing to pay since it's not traded uh in any way. It has limitations. It has, it's value is always with relation to the bank par, and we set it up on the books at a hundred dollars per share and uh it will always be worth par when redeemed, or if redeemed.

By the COURT:

But would that stop in and of itself doing anything for an owner, either in returns, or advantages, or benefits, or facilities of any kind?

By the WITNESS:

Uh it's a requirement for the borrower to obtain a loan and it's in the statute.

By the COURT:

Sort of like having a membership in the country club. Then you couldn't go to the club unless you had some of this stock as membership. That's what that is, isn't it?

By the WITNESS:

In, in a sense, that's right.

By the COURT:

40

Q. But at the time, at the time that you, you established uh the pay out period, could you say that you had had twenty years experience, or fifteen years experience over which to make a judgment with respect to this 1% spread?

A. Yes, we have experience in the operation of the  
41 bank.

Q. That's been operating since 1933—

A. 1933, yes.

Q. You've been dealing in the money market almost daily since that time?

A. Not daily but uh we've been dealing in the money market, yes.

Q. Now is it true that uh after stating, after setting up the pay out period and setting up the amount that you could pay out each year to meet that uh retirement goal, that you did even better than you had expected, that is, that you paid off, that you exceeded your retirement goal in each year after setting it up?

A. Yes, we did, due to increased loan volume.

Q. When you set up the goal, could you anticipate increased loan volume?

A. We took that under consideration in our, in our original estimate to set up a goal because you will notice that the C Stock retirement; uh that we projected increased periodically through the period.

Q. On direct examination, you stated that C Stock was never retired by the bank except in a situation where you were dealing with with the C Stock of a defaulting borrower, is that correct?

A. Yes.

41 Q. And uh you applied his C Stock to the payment of his debt?

A. To whatever portion that would be needed to satisfy him.

Q. Now did you apply that, that is, if he had a hundred dollars par value, one share of stock, C Stock with a par value of one hundred dollars and he owed the bank two hundred dollars, after the application of his stock what would he then be left owing the bank under that example?

A. If uh, you say if the security did not liquidate the loan—

Q. Yes sir.

A. And we had to apply the value of the, we had to apply C Stock, we took that option to apply C Stock—

Q. Yes sir.

A. We would uh push it in there at the full value, par value.

Q. In other words, you would apply it on a dollar for dollar basis?

A. On, at the par value, yes sir.

Q. Now as I understood your answer a while ago, your answer was restricted to C Stock only. Isn't it also true that you would apply allocated surplus to that defaulting borrower to his uh debt also?

A. If it would be required.

42 Q. Uh—

A. To uh liquidate the indebtedness.

Q. And you would also apply the allocated surplus on a dollar for dollar basis—

A. Yes sir.

Q. Par value of the allocated surplus.

A. Yes sir.

Q. Now you were asked some questions about uh a tax uh on cross examination and you said that, as I recall, that after the A Stock was fully retired that your tax base will change, is—

A. That's correct.

Q. That correct?

A. That's correct.

Q. Now when you say that your tax base will change, what do you mean by that, Mr. Verlander?

A. We become, we will be in the same position as a uh a cooperative that does not have an exemption.

Q. What sort of income, does the New Orleans Bank for Cooperatives have income from a tax sense?

A. Yes, that would be tax.

Q. What is the source of that income?

A. That would be interest on uh Government securities that we own and uh possibly some interest uh that uh would be realized in a bank from uh investment of our funds in  
43 the daily operation of the bank.

Q. Would this, would this be a substantial tax, Mr. Verlander? You're talking about tax on interest on money, aren't you?

A. Yes. This would be on interest income not uh from the patrons of the bank but uh business uh——

Q. Essentially invested money of the bank——

A. Yes.

Q. That was invested?

A. Yes. Of course, we, going one step further, any other income too would be uh you would call it income from uh operations other than or from assets other than in our lending operations would be taxable.

Q. Can you give me for an example?

A. Well for example, if we ever had rental income, we would have to pay tax on that, Or extraneous income.

Q. That's what I'm getting at. What extraneous income do you anticipate that the bank might receive in the future years?

A. Well we don't have any other than this investment income.

Q. Now I believe you stated that uh borrowers were  
44 required to pay for C Stock in cash, that is, the so-called interest over-ride for this investment stock. Is it not so that, well, isn't it true that B Stock could be converted to meet the investment requirement?

A. Absolutely, if the borrower owned B Stock he would have that privilege to convert it.

Q. Now will that be, did that occur?

A. In many cases, yes sir.

Q. And when it occurred, uh well, strike that. What was the par value of the B Stock?

A. A hundred dollars per share.

Q. And the same was true, the C Stock had the same par value?

A. Yes.



Q. When uh B Stock was exchanged for C Stock for these investment requirements, was one share of C Stock uh given to the uh borrower for one share of B Stock?

A. Yes, and the reason, because the borrower paid cash for B Stock and uh since it was paid uh in, for in cash, why uh it would be the same thing as buying a share of C Stock and converting it.

Q. Yes sir. Uh but it's also true that there is a pertinent to a share of B. Stock a right to dividend?

A. Yes, —

Q. Isn't that true?

45 A. A small dividend (inaudible) two, four for seven.

Q. And uh there is no dividend rights pertinent to C Stock, is that right?

A. That's correct.

Q. Now let me ask you in this area here. While while there's no dividend right to uh C Stock, did the bank consider allocated surplus as being a pertinent to C Stock? In other words, if if uh an individual, if two borrowers wanted to transfer C Stock, is it not true that as a matter of course the allocated surplus relating to that C Stock is transferred at the same time? Do I make myself clear to you?

A. Uh yes, uh I think you do. And I would say in cases yes, the allocated surplus was also —

Q. But the allocated surplus goes right along uh hand in glove with the C Stock?

A. Generally, but as far as it's uh status, it's not C Stock because it is just a credit on the books and it would be behind C Stock.

Q. It's a credit on the books —

A. Of the Bank, credits on the books of the bank in the in the borrower's uh —

Q. In lay terms, in lay terms, I hope you understand what I mean, uhh could we say that uh when you credit these uh  
46 sh shares of C Stock on the books and the allocated surplus on the books, that is, at the bank, that this allocated surplus and C Stock was owned by the borrower, I'm talking about lay terms?

A. Yes.

Q. As I understand it, the bank also had uh in addition to it's allocated surplus, another type of uh reserve. Well, first of all,

let me ask you, isn't it true that the allocated surplus was some sort of reserve for the bank?

A. Well it's a mandatory reserve uh that's required in a loan.

Q. How is the amount of the al uh funds that go into the allocated surplus measured?

By Mr. SATTERFIELD:

Please the Court, I have an objection to the last some fifteen or twenty questions. They are all covered by the stipulation, the relationship of allocated uh surplus being subject to the C Stock and subject to use by the New Orleans Bank for Cooperatives if necessary; the various provisions are shown in the stipulation. I object on that ground.

By the COURT:

What's the need in going over it again, Counsel?

By Mr. WARREN:

I, I, I, it may be in there but at the present time,  
47 I don't recall where it would be, Your Honor.

By the COURT:

Well I'll let you ask him if you're not sure.

By Mr. WARREN:

Yes, sir.

Q. Uh the question is how is the amount of the allocated surplus arrived at? How do you determine, after you've got earning, earnings and you're going to uh credit some of the earnings to uh allocated surplus of the borrower and some of it to the borrower as C Stock patronage refund. How do you measure the amount that you are going to allocate to allocated surplus and to Class C Stock?

A. In the operations of the bank, of course, we have to operate under the law and the law spells it out how the earnings of the bank will be uh allocated at the end of the fiscal year. Uh the first take out is for any impediment on uh stock. Secondly, 25% of the earnings uh is set up in this allocated reserve, or allocated surplus, as you call it.

Q. All right, sir. That's as far as you need to go unless you want to go further.

A. No.

Q. Okay. Uh you say you first restore any impairment of capital?

48 A. Yes sir.

Q. And it's been stipulated that the New Orleans Bank for Cooperatives has never had any capital impaired, at least the Board has never made any such determination?

A. True.

Q. What, what, the bank sort of hangs on to this uh allocated surplus, in lay terminology, and what does it hang on to it for? If you know.

A. For reserve, for uh any losses that might uh uh come up.

Q. Yes sir, but uhh there is another type of surplus the bank has, isn't it, doesn't it, Mr. Verlander?

A. We have no contingency reserves, no.

By Mr. WARREN:

May I get one of these documents here? Just want to clarify a point or two.

Q. Look at page 109 of uh, let me see the exhibit number on that, Mr. Verlander, so I can make a record reference. I have handed you stipulation exhibit number 19-f and I ask you to look at page 109.

A. Yes sir.

Q. Of that uh exhibit, that's the operating statements of the balance sheet of uh the New Orleans Bank for Cooperatives on the right hand side, isn't it Mr. Verlander?

A. Yes sir.

Q. Now down at the bottom, we've got two kinds of surpluses, do we not?

A. Yes.

Q. Well will you tell the Court what that first uh what that first reserve is for?

A. The first surplus?

Q. Yes sir.

A. Three million six hundred and twenty seven thousand?

Q. Yes sir.

A. That represents the earnings of the bank that uh were accumulated from 1933 until January 1, 1956.

Q. For what purpose?

A. That uh set out there as surplus.

Q. What the particular point is, would it be fair to call this a valuation reserve?

A. No sir.

Q. Where is the valuation reserve of the bank on that balance sheet?

A. We have no valuation reserve. We have uh a reserve for losses or uh loans and this is uh in the asset side.

Q. In in case the uh bank were to get into some financial difficulty and you haven't uh priority, don't you, 50 what uh what accounts you reduce first?

A. Yes sir.

Q. In In the uh order of priorities, where would you get to uh reducing the amount of allocated surplus that is, surplus allocated to—

A. If we had a loss?

Q. Yes sir.

A. On our loans?

Q. Yes sir.

A. We would first apply the reserve we have for losses on loans, and if that reserve was not sufficient uh to uh satisfy it, we would go to our earnings for that year and apply those. And if that was not sufficient, then we would go to the surplus allocated to patrons.

Q. All right, sir. Now the next next point is uh during your entire tenure with the New Orleans Bank for Cooperatives, has it ever been necessary to uh reduce the amount of allocated surplus by virtue of a loss sustained by the bank?

A. No.

Q. Mr. Verlander, I don't know whether I asked you 51 this, but if I haven't and to be sure I have it in the record, let me ask you uh if I used the term, old stock, old stock—

A. Ode stock?

Q. Old, O L D, stock, would you know what I meant?

A. Yes.

Q. What, what does that mean?

A. Uh this uh before the 1955 amendment uh went into effect. In other words, from a period, 1933 through uh 55, the bank issued this uh stock to a borrower in proportion to the amount of loan that a borrower requested or applied for.

Q. Now comes the Farm Credit Act of 1955. Uh there was no more of that old stock, so-called, issued, was there?

52 A. That's correct.

Q. Now did the bank permit uh holders of that old stock to exchange it for C Stock under the 1955 Act, to meet the investment requirements with respect to uh C Stock purchases uh related to loans?

A. I uh my memory is vague on that as of now.

By Mr. WARREN:

May the witness have exhibit number 13-a?

Q. And page 4, page 4 of 13, exhibit 13-a, under the section referred to as deductions, do you see a provision that says quote old unquote stock (inaudible) is that a requirement?

A. Yes.

Q. Do you know what that means?

A. Yes.

Q. What does it mean, please sir?

A. It means that the old stock that a borrower had was converted C Stock.

Q. I don't mean to be uh I can appreciate the fact that you couldn't understand that, I mean you didn't know the response to my question before, but having looked at this which you recognize I would think as a report to the Board of Directors of the Bank of uh 1960—

A. Yes.

53 Q. Do you recall whether that old stock was converted on the basis of uh dollar for dollar?

A. Yes, because the borrower actually paid cash for it, in a sense.

Q. What do you mean by in a sense?

A. Well it was either added to or deducted from the loan.

Q. That is when he acquired the old stock?

A. Yes.

Q. Did the New Orleans Bank for Cooperatives permit holders of old stock to have that uh old stock redeemed for cash or applied to uh their indebtedness?

56

Q. Yes sir, Uh did the New Orleans Bank for Cooperatives permit the owners of old stock to redeem that old stock for cash once they paid off the loan?

A. No, we didn't redeem it for cash. We just applied it against the remaining loan balance.

Q. All right, sir, that's all right—

57



A. In other words, we didn't give the man cash for it.

Q. If he had a hundred dollars worth of old stock and uh par value of one hundred dollars and he owed the bank, a hundred dollars would just wash the thing clean and that's it?

A. Yes.

Q. Okay. And did, did this occur after the effective date of the Farm Credit Act of 1955?

A. If a borrower had a loan contract with the bank, say a term loan, it would, of course, have been made, say before the effective date of the Farm Credit Act uh as amended uh in 1955 and uh since that contract was outstanding, well we had to abide by the terms of that contract.

[60]

Q. uh Do you know where the term, interest over-ride, came from, Mr. Verlander?

A. The origin of that phrase?

Q. Yes sir. Do you know where it came from?

A. We coined it in the bank (laugh) and our borrowers, I think, picked it up also.

Q. Does, does the phrase mean to you, of being the President of the bank, uh something other than interest?

A. It means the amount uh that we require our borrowers uh to pay over and above the C Stock for the purchase  
[61] uh over and above interest for the purchase of G Stock.

Q. All right, sir.

By Mr. WARREN:

Your witness.

#### REDIRECT EXAMINATION

By Mr. SATTERFIELD:

Q. Mr. Verlander, when you referred to the amount required to be paid over and above the interest for the C Stock, when you use the word interest, you were referring, were you not, to the interest set forth in the loan documents as to which there was an agreement to pay this additional amount. Isn't that correct?

A. Yes sir.

Q. And in uh Exhibit No. 2 to the uh Coastal stipulation and Exhibit 31 to the Mississippi Chemical Stipulation, you might refer to Exhibit 2 you have there before you there, they're the same in both, the uh other than the first entry of the quali-

fying share, the entries are in the number of dollars rather than the number of shares, are they not?

A. Yes sir.

Q. And that is true all through your ledger showing these amounts, is it not?

62 A. Yes sir, that's correct.

Q. Now awhile ago, Counsel asked you about the order in which you would resort to the various items appearing in your financial statement in case there was a loss but interpose when you had gotten to the point of allocated surplus. You stated that you first resort to the reserve for losses, then resort to earnings for that year, then to allocated surplus thereafter. Then what would you resort to as a fourth source of funds to take care of any losses after you had exhausted the allocated surplus?

A. Go to the C Stock.

By Mr. WARREN:

I would object to that. The witness testified that they uh never had any occasion to go against uh allocated surplus and that's a step beyond allocated surplus.

By Mr. SATTERFIELD:

Please the Court, the witness has stated that up to this point they have had not go to the allocated surplus but when this witness got that far, Counsel interposed and did not let him finish (inaudible).

By the COURT:

You asked him what he would do, I'll overrule the objection.

63 By the WITNESS:

We would go to the C Stock.

By Mr. SATTERFIELD:

Q. Now there was some questions about the old stock. I won't belabor the questions other than there's one explanatory question, this matter of the use of the old stock, that was not a matter of exchange of stock for stock; the use of the old stock rather than use of new stock, was it not?

A. Correct.

Q. Now during the period here involved, was your bank limited in the amount of interest which it might charge up until recently?

A. Yes, we had a ceiling.

Q. And——

A. On the interest rate we could charge our borrowers.

Q. And what was that?

A. 6%.

Q. Now there was the question asked on direct examination to which objection was made uh concerning the retiring of the government A Stock and the spread which you expected to be utilized in connection therewith, which question had to do with the experience thereafter existing now and which will affect, in fact, the present existing C Stock. Counsel  
64 asked you on the cross as to whether when you set up the goal or expected planned retirement you had twenty years experience or more in the banking business. Since that time you have also had further actual experience, have you not, in the banking business?

A. That's right.

Q. Have you had actual experience in connection with the spread to which you referred before?

A. It has declined.

Q. Now in relation to the spread which would be required in order to retire the A Stock as originally planned, uh what spread in your present volume of uh loans would be required?

A. We feel that it would take about a fifty point spread which would be one half of one percent between the average cost of our borrow funds and the cost we charge.

Q. Is that your best judgment?

A. That's my best judgment.

Q. And what spread are you now able to obtain and are obtaining?

By Mr. WARREN:

I object, Your Honor——[inaudible.]

By Mr. SATTERFIELD:

May it please the Court——[inaudible.]

65 By the COURT:

Let him finish his objection, I haven't heard it yet. You all had better start all over again, both of you were talking at one time.

By Mr. SATTERFIELD:

The question was you have made the statement concerning your expectations or experience in the past. What has been

your actual experience in recent years with reference to the spread which is required to carry out the schedule, in your judgment, of the spread which you are now able and are obtaining in relation to that retirement?

By the COURT:

All right.

By Mr. WARREN:

Now it is true, of course, that I did ask Mr. Verlander concerning his experience uh prior to 19 prior to the time that the goal was established.

[66]

By Mr. SATTERFIELD:

Q. Questions were asked concerning the uh type of taxation to which you would become subject when the Class A Government Stocks were retired, those questions of Counsel being limited to income tax. Are there any other types of taxation to which you would then become subject and which would effect the matters here involved?

67 A. Franchise taxes and state's.

Q. And property tax?—

A. That would—

Q. Are property taxes involved?

A. Property tax?

Q. Yes, property owned by—

A. We have uh, we don't own the building, we just rent space.

Q. Certain questions were asked with reference to Exhibit 5—a being the form of a note and uh a certain printer portion thereof. Uh was that in relation to your testimony that a lien existed against such stock regardless of the fact that no collateral value was given? Referred to a lien existing as against interest?

A. Yes.

By The COURT:

Would the amount that these Plaintiffs in this case paid for the C Stock plus the amount of the interest in these tax years exceed six percent?

By The WITNESS:

Pardon me, Your Honor?

By The COURT:

You said these borrowers had to own some C stock—

By The WITNESS:

68 Yes.

By the COURT:

And had to pay a hundred dollars a share for the stock and had to pay other amounts periodically. What I'm trying to find out is do you know whether or not either one of these Plaintiff's or borrowers for any one of the tax years in question paid more than six percent when you take into consideration the amount of money they paid for the C Stock plus the amount of money which you are calling interest?

By the WITNESS:

I would uh believe that uh at that time rates were not high enough for the total of the two uh the interest charge plus the over-ride, I don't think it would exceed six percent.

By the COURT:

That's what I was interested in——

By the WITNESS:

At at the time that these loans were——

By the COURT:

That's what I'm talking about, because it seems to me as a matter of law that if you charged a concern, say 5% and then you charged him a cent and a half to entitle him to approach you on the subject of making a loan that for all intents and purposes you would have charged him six and a half percent instead of six.

69

By Mr. SATTERFIELD:

May it please the Court, I believe this is fifteen percent of the interest rather than fifteen percent upon the principle.

By the WITNESS:

Correct.

By Mr. SATTERFIELD:

It's fifteen percent of the interest charged as distinguished from one point five percent of the principle.

By the COURT:

That wasn't what I was talking about. He said he couldn't charge more than six percent. Well he was charging an amount which he was calling interest——

By the WITNESS:

No sir——

By the COURT:

That——



By the WITNESS:

We did not call it interest. We call it an investment in the bank.

By the COURT:

70 Well I wasn't talking about C Stock right now. I'm talking about what you call interest because you did get interest, didn't you?

By the WITNESS:

Yes sir.

By the COURT:

When you lent them some money?

By the WITNESS:

It was below the six percent rate at that time.

By the COURT:

But my question was whether or not this amount which they had to pay for the C Stock plus the assessments on the C Stock plus what you charged them and called it interest would exceed six percent.

By the WITNESS:

Uh.

By the COURT:

You follow that?

By the WITNESS:

No, uh I really don't uh Your Honor, because we have only an interest charge in our loan contract; also in our loan contract at that particular time, we had a provision that the borrower would pay on the uh interest that he would pay to the bank uh fifteen percent an additional fifteen percent of that interest and he would receive C Stock in the bank for that payment.

71

By the COURT:

That's what I understood. That's the reason——

By the WITNESS:

And uh say if you have uh a four percent rate, let's assume a four percent interest rate, straight interest rate at the time, then the fifteen percent would amount to uh sixty points. So the effect, if you were looking at it as an effective cash cost to you, as a borrower, it would have been four point six zero.

By the COURT:

I see. So it still wouldn't have exceeded six percent?

By the WITNESS:

That's correct.

By Mr. SATTERFIELD:

If the Court will indulge me just one moment, I would like to confer with Counsel.

By the COURT:

All right.

By the WITNESS:

And this is the way borrowers have looked at it. Uh they look at the cash that pulls out the uh interest rate and this C Stock investment.

By the COURT:

72° That's what I'm looking at. I don't think it makes any difference what you call it if you charged that for it, I think in law and certainly in usury cases it would be interest.

By Mr. WARREN:

I would like to offer something against that at the proper time, Your Honor.

By Mr. SATTERFIELD:

We have one more question, may it please the Court.

By the COURT:

All right.

By Mr. SATTERFIELD:

Q. Question was asked concerning about whether when a when a share, shares of C Stock were acquired, sort of like joining the country club, I believe question of that effect. Uh is it not a fact that when a cooperative buys one share, qualifying share, of stock, thereby he becomes eligible to obtain a loan if he has proper security?

A. That's right.

Q. And once having thus qualified, thereafter is a question of security and business, is it not? Proper security and proper banking business?

A. That's correct.

Q. Thank you.

73 By Mr. SATTERFIELD:

Call Mr. MOUNGER, please.

WILLIAM M. MOUNGER called as a witness for and on behalf of Plaintiff, was sworn and testified as follows:

By The COURT:

We'll take a ten minute recess.

(Court recessed at 4:40 P.M. for 10 minutes).

## DIRECT EXAMINATION

By Mr. SATTERFIELD:

Q. I believe you have been sworn, have you not?

A. Yes, sir.

Q. What is your name, please sir?

A. William H. Mounger.

Q. And, Mr. Mounger, what is your business or profession?

A. Investment banking and brokerage.

Q. And with uh what firm are you now connected?

A. Leland Speed-Mounger & Company.

Q. And where is that located?

A. Jackson, Mississippi.

Q. For what period of years have you been uh engaged in business or professional activities related to the purchase and sale of stocks and bonds?

A. Roughly 29 years with just a few years out for service in the F.B.I. Except for that, uh altogether in this field.

Q. I see. Would you give us some of the connections and capacities in which you uh served in that connection?

A. Well I started in the bond-investment department of Union Planter's National Bank in Memphis; became vice-president of Equitable Securities Corporation which is in the general investment banking business; was president, executive vice president of Lamar Life and on their investment committee—

Q. Is that the Lamar Life Insurance—

A. Jackson.—

Q. Company, Jackson, Mississippi?—

A. And on the board and—

By The COURT:

John he can't get you when you butt in on him like that. He couldn't take either one of you.

By the WITNESS:

On the board of the executive committee of the First National Bank, pertaining somewhat to investments; and then in business at Leland Speed-Mounger & Company.

75 By Mr. SATTERFIELD:

Q. When you refer to the First National Bank, are you referring to the First National Bank in Jackson, Mississippi?

A. Yes.

Q. Have you served on the investment committee of any insurance company other than the Lamar Life Insurance Company in Jackson?

A. Consolidated American Life Insurance Company of Jackson investment committee and of the University of Mississippi. And I believe Millsaps College, Jackson.

Q. Have you, during uh experience that you have accounted, become familiar with the elements entering into the determination of the fair market value of stocks, bonds, and other securities?

A. I believe that I have.

Q. We have here involved a question of what is sometime referred to as fair market value, sometimes referred to as what a willing buyer would pay to a willing seller for a security, neither being under compulsion and I'll ask if you will state state briefly to the Court some of the major elements that enter into a determination of uh such a factor?

A. Well return, of course, current return uh the hope for appreciation or growth in the value of the security uh supplementing these two are various factors uh behind the stock; management, uh the assets that are available for earning a return, uh well, of course, the business that the company is in, prospects for that business, a general economy and the way the industry and the company relate to the economy.

Q. When you refer to growth, uh what connection, if any, does that have with what we refer to as a fair market value? What do you mean by growth of the security?

A. Well generally speaking, growth in the uh value of the security and it's reflected in the market or the willingness of somebody to buy it at a higher price. Uh this has been particularly important uh since the war, World War II, because of a general inflationary trend in the economy.

Q. When you refer to return, what are you, to what are you referring in this connection?

A. Well, I was referring to current return; either dividends or interest paid on the security that you purchase.

Q. Now, Mr. Mounger, you have been handed uh a resume entitled Factors Bearing On Fair Market Value of Class C Stock of the New Orleans Bank for Cooperatives copy

77 has been handed to opposing Counsel and also to the Court. I ask you whether or not you have familiarized yourself with uh these factors that's uh set out?

A. Yes, I have.

Q. Uh in that connection uh Mr. Mounger, would the provision referred to as Number 3, No Divisions, No Dividends Can Be Paid Upon The Stock, have any bearing upon the fair market value of such a stock or security?

A. Well I think it definitely would. There are security buyers that buy securities for current return dividends and uh this, in a sense, eliminates one sector of the market that buys securities because there's no current return.

Q. Referring to Item 10 of those factors uh providing if the directors so desire, a Class C Stock may be retired at par after retirement of all Class A Stock by calling the oldest outstanding stock and so forth. Uh what effect, if any, does the right of the directors, in their discretion to call the stock at par, have upon the growth factor in relation to the increased value of a security and particularly this security?

78 A. Well as I interpret this, this virtually nullifies uh the attraction from a growth standpoint. You redeem this at a hundred and the way I came to, calculated, it, in my opinion, uh money will doubled in value, let's say at 6%, in twelve years. You say 5% money will double in about fourteen years and where, in this instance, you have no assurance that this stock will be paid off within twelve years, or for that matter within fourteen, so as I would reason, uh you are giving them your hundred dollars. If you can take a hundred dollars and compound it at 6%, or let's say 5% if that rate is more applicable to the time, and compound money for fourteen years at 5% and double it, then if you give the bank a hundred dollars, they pay you no return and they wait fourteen years to give you back your hundred dollars, you've just thrown a hundred dollars away.

Q. Then, as a matter of fact, would there be any fair market value for such such security as is here described?

A. I wouldn't, I wouldn't think so. Not in the fields in which, uh not in the normal security channels and not with an investor that uh was knowledgeable in any way regarding money and it's value.



Q. Would there be any such as an investment for the investment of money?

79 A. I can't see how it would uh be attractive to anyone.

Q. That's your opinion?

A. That's my opinion.

By Mr. SATTERFIELD:

Q. Referring to uh other provisions of the stocks, would you refer to Item 11 uh stating forth that the bank has a first lien on all stock owned by any holder as additional security for any indebtedness of such holder but the value of such stock is not considered for loan purposes. Would you tell us whether or not that would also have an adverse effect upon the fair market value of the stock?

A. Well in my opinion it would. It would throw upon the purchaser of the stock almost the obligation to go and examine the cooperative and come to some conclusion regarding its soundness. Uh almost an unsummountable burden to arrive at uh to feel any confidence in the stock at all. Now this be uh a right sizeable problem uh in the case of any large business enterprise uh to appraise it and to say now this stock is is free from uh uh that their financial position is sufficient that the stock is uh there's no danger of the stock being taken  
81 against their obligation, so I think it would definitely uh limit uh in a sense, destroy a market for the stock.

By Mr. SATTERFIELD:

Court will indulge me just a moment?

By the COURT:

Mr. Mounger, as I understand what you're saying is that in the field of security purchases that you generally represent that there would be no market for the purchase of this stock. Is that right?

By the WITNESS:

That's right, and I feel that anyone who actually found these facts, uh could have no basic interest in the stock. If uh money can double itself, if it's compounded at 5% in fourteen years, why buy a stock for a hundred dollars that you have no way of knowing whether they are going to pay you in fourteen, fifteen, or twenty years. And if they decide to redeem that stock at the end of fifteen years, then to my reasoning, you just give

them, just giving your hundred dollars away because you could have put that money at work and double it.

By the COURT:

Those are certainly very sound investment considerations, but it occurred to me that some of these people who  
82 would buy this C Stock wouldn't exactly be voluntarily purchased, wouldn't be voluntary purchases. They couldn't get a loan maybe without buying some of this stock; they had to, just like they had to pay interest to get the money.

By the WITNESS:

Well now if——

By the COURT:

Counsel for the Government is concerned about my thinking but you'll find a lot of usury cases right along the line I've indicated and I know of at least two in the Supreme Court of the United States.

By the WITNESS:

Well on that score, Judge, it would seem to me the first share which qualifies them to get the loan would hold to that reasoning, but then the person would run from every other share because what, in a sense we're saying, is that the bank is making loans uh it might not, uh it might not normally make if it for it being a member, if it wasn't a member of the Cooperative Association. So what I'm saying, actually to my mind uh that destroys the value of the stock as stock because the, it implies that this bank is going to make loans on the basis other than just rigid credit standards.

By the COURT:

83 I don't understand it that way but I do understand that they wouldn't make a loan to anybody except a cooperative and they wouldn't make a loan to a cooperative unless he owned this stock.

By the WITNESS:

One share. What I'm saying, I agree on the one share but I don't see why they would buy one more share because they realize they are buying from a bank that is, is making a loan that may probably compromise sometimes from the rigid credit standards. In other words, I, I might buy a share of Deposit Guaranty to get my own loan but I wouldn't buy, wouldn't want to buy a lot of that stock if they were accommodating all their stockholders just because they were stockholders.

By Mr. SATTERFIELD:

Please the Court, may I call to the Court's attention that Mr. Verlander testified that the New Orleans Bank for Cooperatives has never sold a single share of C stock to any person other than the first qualifying share except under these requirements of the statute. We have no further questions of this witness.

### CROSS EXAMINATION

By Mr. WARREN:

84 Q. Mr. Mounser, are you generally familiar with capital stock of New Orleans Bank for Cooperatives that we are concerned with here?

A. I think I am sir, yes sir.

Q. Well I uh as as an expert witness have you formed any opinion of judgment as to whether the amount of money paid for the uh C Stock in connection with investments uh whether that sum of money is an interest charge or a capital investment?

By Mr. SATTERFIELD:

Objection, may it please the Court. That's a legal question.

By the COURT:

That's probably what you're asking me, isn't it?

By Mr. WARREN:

Yes sir, as a matter of fact, that's true.

By the COURT:

I sustain the objection.

By Mr. WARREN:

Q. Mr Mounser, I think that I really have only one, one question that might a little bit but essentially it's going to be this. If uh, this is a big if, I'll grant you that. If uh it could be determined with some reasonable degree of accuracy  
85 that a property, be it stock of this bank or other stock or some other property but if it could be determined with some reasonable degree of accuracy that you could re uh receive a return of your capital investment in that property at a uh predictable time and there was no provision for appreciation in principle value, that is, where the value of the stock itself is increased and there was no possibility for the payment of dividends on that stock but at the same time the management of uh the management concerned managing the property appeared to be as sound concerned business-wise had experienced losses in the neighborhood of one eighth of one percent over a great

number of years, if you could predict with some reasonable accuracy when you could get your money back, would it be possible uh to assign to that property a fair market value based upon discounting the value of the property?

A. Well in my judgment, now we're talking about this stock?

Q. No sir, I'm talking about the, about just properties in general.

A. I would say that basically uh an investor uh would want a maturity date. If we're talking, in other words, if we're going to arrive at a value uh by uh calculating uh what money's  
86 worth, then they want a contractual maturity date which is the normal procedure in the security markets and that's the way, of course, you get your fluctuations in the the bond market. So what, it seems to me here, that uh uh this would be, would imply, try to imply to the stock the characteristics of the bond which are not present.

Q. Well now, you're you're, I think, trying to anticipate my next questions and I can outline them to you, they are rather relatively simple. Uh what is the term in the financial world, what does the term uh present value of a property mean? What is, what what does that term mean? You want to know the present value of an amount payable in cash in the future. Do you understand that terminology?

A. I would have to, now, now going back to the fair market value, and it's true of a bond or stock—

Q. Now Mr. Mounger, if you please—

My Mr. SATTERFIELD:

I object to interrupting the witness, Your Honor.

By the COURT:

I don't think Mr. Mounger understands his question.

I'll let you restate your question.

By Mr. WARREN:

87 Alright.

Q. In the, in the uh, does, does the term present worth of an amount payable in the future have any significance to you?

A. It does in relationship to a fixed maturity in a contractual date maturity, yes.

Q. The question, the next question this is if there is a security, the principal of which can be recaptured in a reasonably predictable period, at the end of a reasonably predictable period, could that security be given a fair market value?

A. I assume that it could if you could convince someone that uh yes, that's right.

Q. Well now getting on down, now getting the basic principles involved here, now getting on this New Orleans bank stock that we're concerned with presently. If you could establish a reasonably, uh a date when it could be reasonable to assume that you could get your money back out of this C Stock, could, could it be assigned a fair market value on the basis of discount principals?

A. If you could absolutely prove that uh the date that it was going to be redeemed, I think you could make that calculation. As I testified before, when you know what money, the time that it takes for money to compound, you've got to come  
88 within those guidelines for it to be worth anything.

Q. Well now what were those guidelines again?

A. In other words, alright, money at 6% will double itself in twelve years. Money at 5% will double itself in fourteen plus years, fourteen and a fraction years. If you put in a hundred dollars the date that you get your hundred dollars back extends anywhere beyond those periods, then you've just thrown your money away because you could have taken that hundred dollars back in 1958 and 59 and invested it in a preferred stock and I think at that time the rate, a good preferred stock in a high grade utility, Mississippi Power & Light Company a 6% return, so you could have doubled the money if it was compounded. So uh the risk of uh various things, changes in the money market which could delay the redemption in this instance, uh make the uh make it almost impossible for anybody to say this stock will be be redeemed in this year because uh while I know that 66 doesn't apply to this particular thing, but 66, for instance, none of us in the money market ever imagined we'd have credit crunches like we had in 1966 and nobody would have believed uh in 58 that the interest rates in the bond  
89 market would be in the condition that it is in today. Uh that Government Bonds would be some selling at 6%.

Now these factors uh weren't known in 58 but they were a part of the risk of buying a share of stock that had no return



that was to be redeemed because these credit crunches slow down uh the ability to redeem. Uh it's possible, to my way of thinking, looking at this situation, that money could become so tight that farmers, uh cooperatives would slow down and almost stop their borrowing. This happens, this is the reason the Federal Reserve raises rates sometimes slows business enterprises down from using credit, so if rates go to such a level that the cooperatives say we're not going to borrow this year, we're going to wait until next year, they will buy less C Stock that will slow down the reduction of out-standing C Stock and prolong uh beyond any reasonable period uh as far as return is concerned, the redemption of the present C Stock outstanding.

Q. Are you uh familiar generally with the Class B Stock of New Orleans Bank for Cooperatives?

A. I've read these pamphlets and generally, yes, I am.

Q. Uh do you know what the limitation was on uh dividends on those stocks?

A. As I understand it, it was, top limitation was 4%.

Uh they could not pay less than 2, am I right, uh  
90 and still distribute any C Stock.

Q. Alright.

A. Now this stock—

Q. But do you—

A. I don't—

Q. Pardon me. Go ahead.

A. I don't know the market but I would assume that uh the B Stock is selling at a very substantial discount.

Q. But do you know whether any, as I understand it, you said that an individual back during this period would have been foolish to have invested money in anything that wasn't paying as much as 6%, is that correct?

A. Well, it would have been foolish to have paid, to have bought a non-return stock that could not be redeemed anywhere, except a hundred dollars, in other words, had no growth factor in it at all, no return at all, and that his money might be in their hands for an indeterminable period when had he invested it at 6%, he could have doubled his money in twelve years. So, yes, I think an investor would have been, from an investment standpoint, would have been—witness mumbling and unable to understand—

Q. Now do you understand, Mr. Mounger, that an individual who invested his money in B Stock of the New Orleans Bank only had a right to uh get back his hundred dollars when the B Stock was redeemed. You understand that, don't you?

A. Right. I do.

Q. All right. And you also understand that should the bank decide not to pay any patronage refund that it didn't have to make any dividend declaration on the B Stock. You understand that, don't you?

A. 2%, am I right? No, no, I thought they had to pay at least 2%.

Q. If they, if they decided to uh issue uh patronage refund, but if they didn't issue any patronage refund, it's my understanding that they didn't have to pay anything on the B Stock. Is that your understanding of it?

A. Well, I'm not, I'm not clear on that point. I, I was thinking that they paid 2% but uh I don't think it makes any real difference.

Q. But uh the point I'm making is that an individual buying a share of B Stock uh under the law could, could not, could not be assured that he was going to get any dividends on the stock—

By Mr. SATTERFIELD:

Objection. That's a question of law, may it please the Court. That's before the Court on stipulation.

92 He's asking under the law what he might get.

By the COURT:

Yes, I sustain the objection.

By Mr. WARREN:

Q. Well just just so I'm sure that I understand your testimony, Mr. Mounger, this is the real, the crux of my question to you. If you could determine with some reasonable degree of accuracy the time at which the uh Class C Stock would be retired and you could get your hundred dollars back that you paid for the C Stock, could the stock be given a market value?

By Mr. SATTERFIELD:

Please the Court, object on repetition. It's been covered very fully.

By the COURT:

Yes, I think he's answered that. Sustain the objection.

By the WITNESS:

Should I answer the question?

By the COURT:

No, sustain the objection. Ask him something else.

By Mr. WARREN:

Just for my information. The objection was made on the ground that the witness answered the question?

By Mr. SATTERFIELD:

93 On the ground of repetition.

By the COURT:

That's what I sustained it on. You asked him the same question at least twice.

By Mr. WARREN:

Q. You have stated, Mr. Mounger, that you have uh been in the investment field, brokerage business, for 29 years, most of the time, except for time out for service and some Government time, I believe?

A. Yes sir.

Q. Have you ever attempted to uh put a market value on any stock like this before?

A. Well I've attempted to put a market value on stock—

Q. Or make a determination—

A. Or securities.

Q. Yes sir.

A. Right.

Q. Yes sir.

A. Sure, I have.

Q. What was the nature of those securities?

A. Well, say one, School Pictures which is a common stock. In other words in underwriting a situation, try to arrive at a price at which we bring the stock and this is, a number of situations where I participated in that type of—

94 Q. No. I'm talking about evaluation of a security where it can only be traded between members of a restricted group?—

A. Oh, no, I haven't.—

Q. And where they don't pay any dividends and you can't uh redeem them until a future time—

A. No. I'm relating my experience in the security market generally to this situation. I haven't done this specific thing before, no.

Q. This, this is not, this is a unique type of security, isn't it, Mr. Mounger?

A. I would say most unique, most unorthodox, yes.

Q. Yes sir.

By Mr. WARREN:

May I consult with Mr. O'Farrell for just a moment, please?

Q. Thank you very much, Mr. Mounger.

(Witness excused.)

By Mr. SATTERFIELD:

The Court will indulge us for just a moment, we may be in a position to rest.

By the COURT:

All right.

(Counsel for Plaintiffs conferred.)

By Mr. SATTERFIELD:

95 May it please the Court, the Plaintiffs rest.

By the COURT:

All right. What says the Defendant?

By Mr. WARREN:

The Defendant calls Mr. H. C. Polk.

HIRAM C. POLK CALLED as a witness for and on behalf of the Defendant, was sworn and testified as follows:

#### DIRECT EXAMINATION

By Mr. WARREN:

Q. Please state your name?

A. Hiram C. Polk.

Q. Where do you live, Mr. Polk?

A. Jackson, Mississippi.

Q. What is your occupation?

A. I'm Comptroller of Mississippi Federated Co-Op, more recently known as M.F.C. Service.

Q. How long have you been uh associated with that organization?

A. 28 years.

Q. And in what capacities, please sir?

A. Chief Accountant for 18 years and Comptroller for 10 years.

Q. Uh were you Comptroller of uh Mississippi Federated Cooperatives uh during 1964?

A. Yes.

97 Q. Uh do you have, well, just let me ask you a question. Did the uh Mississippi Federated Cooperative acquire uh any of the Class C Stock of the New Orleans Bank for Cooperatives from an organization known as uh Associated Cooperatives in May of 1964?

99 By Mr. WARREN:

Q. Did, did, uh do you recall the question or would you like for me to repeat it?

A. Repeat the question, please.

Q. Did Mississippi Federated Cooperatives acquire Class C Stock of the New Orleans Bank for Cooperatives from Associated Cooperatives in May of 1964?

A. Yes.

Q. Do you, have you brought in any records of Mississippi Federated Cooperatives which would show the amount of that stock that Mississippi Federated Cooperative acquired at that time?

By Mr. SATTERFIELD:

May it please the Court, we renew our objection on the same ground that has heretofore been entered and that is this is a transaction, apparently, an isolated transaction subsequent to the time here involved which could not have any bearing upon the matters involved up June 30th, 1963.

By the COURT:

101 Q. Uh do you recall the question, Mr. Polk, or shall I restate the question?

A. Restate it, I.

Q. You have stated that in May, would, would you understand what I mean if I used the term, M.F.C.?

A. Yes.

102 Q. And that means Mississippi Federated Cooperatives, doesn't it?

A. No answer.

Q. Please answer, Mr. Polk, for the record?

A. Yes, yes—

Q. You understand—

A. I'm sorry. Yes, I understand M.F.C., yes.

Q. Means Mississippi Federated Cooperatives?

A. Right, yes.



Q. All right. Have you brought in with you records of M. F. C. which shows the amount of stock acquired, of Class C Stock acquired from Associated Cooperatives in 19, May of 1964?

A. I have.

Q. And uh you have given me copies of those documents. Will you describe the document whereon that information is listed?

A. First, in compliance with the, with the subpoena, it asks for the original check wherein we purchased, or rather M. F. C. purchased uh Class B and Class C Stock from Associated Cooperatives, who was in the process of being liquidated. So here is Mississippi Federated Co-Op's check, 021414, dated May the 29th, 1964, issued to Associated Co-Op in Sheffield, Alabama for twenty seven thousand dollars, which represents the purchase of fifteen thousand dollars of B Stock and also, some 103 twenty seven thousand four hundred dollars of C Stock for which we paid twelve thousand dollars.

Q. All right.

By Mr. WARREN:

Now, if it please the Court, I uh have a copy of the check to which the witness has made reference and if it please the Court, I would like to uh offer in evidence that check and substitute a copy for the record.

By the COURT:

I think to lend any value to his testimony, you have to show the circumstances under which they bought this property. I'm in the dark on that. The fact that he bought some stock doesn't mean a thing in the world to me. I don't know whether it was a voluntary sale or a forced sale or what kind of sale it was. If you want to develop that, you may do so.

By Mr. WARREN:

Q. Mr. Polk, have you brought the entire correspondence file of M. F. C. with you relating to the purchase and sale of that, of that stock?

A. Yes sir, I have.

Q. Do you have uh any uh document in that file that would indicate how the uh transaction arose?

104 A. I have the documents here. They may not be in the sequence that the Court wishes but I have the documents

here. First, we have the invoice of Associated Co-Op to uh support the check that we issued. We also have a report from—

By Mr. SATTERFIELD:

Excuse me just a moment. May it please the Court, I haven't had opportunity to view this. Would it be appropriate since he is about to testify from the file for me to review the file briefly so I would be in a position to know whether or not objection should be made?

By the COURT:

Well, let me ask him this. Are you familiar with the circumstances and conditions of your own knowledge of the acquisition of this stock?

By the WITNESS:

Yes sir.

By the COURT:

You might just ask him about this, aside and apart from what his file shows.

By Mr. WARREN:

Q. All right, sir, state to the Court, Mr. Polk, how this uh transaction came about:

A. It, it was a combination of interests. Mississippi 105 Federated's Manager, Charlie McNeil, was a director of Associated. We were one of their best customers volume-wise and when the liquidation began, Mr. Spivey, who was General Manager at that time and succeeded Mr. McNeil, knew of uh the liquidation of Associated and so uh Neo Pendelton was then President of New Orleans Bank and it was a negotiated combination transaction between the President of the New Orleans Bank uh the General Manager of M. F. C. and the uh and the uh Liquidation Committee of Associated Co-Op. And M. F. C. purchased it in an effort to uh assist the stockholders of Associated so they would receive that much more in the uh final disposition or dissolution. And also, if I might state, at that time, M. F. C. had acquired quite a sum of Class B Stock. In fact, at that time, we owned about four hundred and sixty three thousand dollars of Class C Stock of which we uh entered onto our records at the full face value. This was upon instructions received from the lender that the cooperative take into account debiting his investment account and also crediting uh the uh other revenue when we took it in. So M. F. C. is in

the position of having recorded all of the uh patronage surplus and so forth from the N.O.B.C. and also we have in turn  
 106 allocated it to the various patrons who do business with M. F. C. So we have considered it at the full face value based upon the instructions from the bank.

By Mr. WARREN:

Q. Mr., Mr. Polk, getting back to the issue at hand: What was the par value of the stock that was purchased from Associated?

A. The par value of the B Stock was a hundred and fifty shares for fifteen thousand dollars which we paid cash for, and the value of the C Stock, based upon the bank's analyst, was, pardon, was twenty seven thousand four hundred and eight dollars and thirty nine cents plus nine thousand two hundred and seventy four dollars and seventy nine cents which would equal something in excess of thirty six thousand for which our General Manager bid twelve thousand dollars on it.

By the COURT:

What was the other plus there?

By the WITNESS:

Uh it was twenty seven thousand four hundred and eight dollars and thirty nine cents Class C Stock.

By the COURT:

For C Stock?

By the WITNESS:

107 Yes, sir, an allocated surplus, nine thousand two seventy four seventy nine.

By the COURT:

Two seventy four?

By the WITNESS:

Two seventy four seventy nine.

By the COURT:

All right. You want that check marked in evidence?

By Mr. WARREN:

Yes sir.

By the COURT:

It may be entered and be marked.

(Received in evidence and marked as Defendant's Exhibit No. D-1).

By Mr. WARREN:

Q. Now you said that you had also brought an invoice along. Uh the uh do you have the copy, the original of that invoice before you, or your office copy?

A. Yes.

Q. After, after Associated Cooperatives and Mississippi Federated Cooperatives entered into the agreement for the purchase and sale of the B & C Stock, uh did uh Associated Cooperatives send you a bill for the amount that you agreed to pay?

A. They did.

108 Q. And do you have a copy of that invoice?

A. Yes sir.

By Mr. WARREN:

I would like that marked as an exhibit to his testimony, please sir.

By the COURT:

Show it to Counsel.

By Mr. WARREN:

May we substitute a copy for the record, please?

Q. You want to take that back, do you not, Mr. Polk?

A. Yes.

By the COURT:

What about that check?

By the WITNESS:

We had a photostatic copy of it and submitted it to the Clerk.

By the COURT:

Oh. All right, that invoice may be entered and be marked.

(Received in evidence and marked as Defendant's Exhibit No. D-2).

By Mr. WARREN:

Q. Now, have you also brought in a copy of the M.F.C.'s uhuh investment ledger?

A. Yes sir, I have and I have it before me.

109 Q. And uh what, what, how was the C stock acquired from uh, well first of all, was the C Stock acquired from Associated Cooperatives entered on that ledger sheet?

A. It was entered and you say how was it entered?

Q. Was it entered?

A. It was entered as an investment on the Class C Stock ledger card.

Q. And uh for the benefit of the record, would you state the date of the entry and describe otherwise the entry?

A. The entry was made by the accounting staff on May the 29th, it was recorded from the copy of the original voucher and it reflected this information: B Stock, fifteen thousand dollars; C Stock, par value, excuse me. B Stock, par value, fifteen thousand dollars; C Stock, par value, twelve thousand dollars, and an entry was also made to—

Q. Excuse me, you say C Stock par value—

A. That's the way the record reads here.

Q. What, what after you said C Stock, par value, what was the net figure?

A. Twenty seven thousand, four eleven thirty one.

By the COURT:

I thought you said twenty-seven—

110 By the WITNESS:

Yes sir,—

By the COURT:

Four 0 eight thirty nine?

By the WITNESS:

Well there was a change in the patronage for that year for a couple of dollars in the close out, Judge. It was twenty seven, the analyst from the bank reported twenty seven thousand four 0 eight thirty nine, and the uh uh Associated records showed twenty seven thousand four eleven thirty one. There was a couple of dollars variation in the uh records.

By the COURT:

While I'm talking to you, you said you paid twelve thousand dollars as the negotiated price for this stock and you received a surplus of ninety two seventy four seventy nine. So you paid something less than three thousand dollars for the stock, didn't you?

By the WITNESS:

We paid twelve thousand dollars for the twenty seven thousand four hundred plus the ninety two hundred. We would have paid twelve thousand dollars for the uh B Stock and the uh surplus.



By the COURT:

That's what I'm asking you about. You didn't put  
111 out but about three thousand dollars then, is that  
right?

By the WITNESS:

No sir, the total outlay was fifteen thousand, we put out  
twenty seven thousand.

By the COURT:

I'm just talking about the C Stock.

By the WITNESS:

Oh, the C Stock. Uh.

By the COURT:

You got a surplus ninety two seventy four seventy nine plus  
the C Stock twelve thousand dollars—

By the WITNESS:

Right.

By the COURT:

As I understand it.

By the WITNESS:

We paid twelve thousand dollars for the C Stock value plus  
the surplus. So we bought thirty six thousand dollars of invest-  
ment value for twelve thousand dollars cash, so we would have  
paid about thirty cents on the dollar, sir.

By the COURT:

That's what I was trying to find out. You didn't get that cash.  
you just got a credit—

112 By the WITNESS:

That's correct, I'm sorry, I didn't, the bank made the  
appropriate transfer on their records from Associated Co-Op  
to M. F. C.'s records, right. I'm sorry.

By Mr. WARREN:

Q. All right, back to the ledger sheet and M. F. C.'s account-  
ing treatment of the item. Uh I note there under, under the  
description headed to bring C Stock prescription from Asso-  
ciated up to par, now will you explain to the Court what that  
means?

A. Inasmuch as we had purchased twenty seven thousand  
four hundred and eight dollars, in one instance, let's let's get  
this clear. In one instance the records, Associated records shows

twenty seven thousand four eleven. The bank's records shows twenty seven thousand four 0 eight..

By the COURT:

Thirty nine?

By the WITNESS:

Yes. Is that clear? Now—

By the COURT:

No sir, that's not clear.

By the WITNESS:

(Laugh) Well that's what the variation in the two  
113 corporate records and that's where the, in other words, there was a non-reconciling item in there of two dollars but in answer to your question, the entry that was made by M. F. C. was to bring the, the par value of the C Stock purchase to it's full face value.

By Mr. WARREN:

Q. Full face value uh with respect to what?

A. Full face value as shown on the N.O.B.C. records and also those of uh Associated Co-Op's.

Q. All right, sir.

By Mr. WARREN:

I ask that the ledger sheet be uh uh made an exhibit to his testimony and uh a copy substituted for the record.

By the COURT:

Show it to Counsel. Do you have a copy?

By Mr. SATTERFIELD:

Yes.

By the COURT:

All right. It may be entered and be marked.

(Received in evidence and marked as Defendant's Exhibit No. D-3.)

114 By Mr. WARREN:

Q. While I'm looking through here, Mr. Polk, uh did, did uh M. F. C. borrow money from the uh New Orleans Bank for Cooperatives during uh 1963 and prior years?

A. Yes sir.

Q. For how many prior years did it borrow money, if you know?

A. M. F. C. has been indebted to New Orleans Bank for Cooperatives for the past 28 years, to my personal knowledge.

The loan may have been paid in full three times at the end of the farming season, Judge, but they've been indebted to them for some amount for the past 28 years.

Q. Did uh M. F. C. receive any indication uh by way of letter from the New Orleans Bank uh as to the uh way the transaction was recorded on its books, that is, the bank's books?

By Mr. SATTERFIELD:

Please the Court, we object, it's not material. We've introduced the ledger in which it is shown on all these various entries made on the bank, of the New Orleans Bank for Co-  
115 operatives in dollar amount relating to the full par amount.

By the COURT:

I don't think it's material how he carried it on his books.  
Sustained.

By Mr. WARREN:

Did you say—

By the COURT:

Sustained.

By Mr. WARREN:

On the books of the Bank?

By the COURT:

On his books.

By Mr. WARREN:

I'm asking if his organization received from the bank a letter indicating how the bank treated this transaction. How it went about transferring the credits, et cetera, on its books.

By Mr. SATTERFIELD:

Please the Court, we object as immaterial.

By the COURT:

I didn't understand the question like that but now I understand it and I still make the same ruling.

By Mr. WARREN:

All right, sir.

By the COURT:

116 You may get his answer for the record, if you wish.

By Mr. WARREN:

Q. Yes sir, for the record. Will you answer that question for the record, please sir?

A. The President of the Bank, who is deceased, advised our general manager that they were making the appropriate transfers from Associated Co-Op to M.F.C. on their books.

Q. And uh do you have the letter by which that advice was given?

A. Yes, it was signed by Neal Pennington and dated uh in May, 1964, yes.

Q. Does that letter to which you refer bear the letterhead of the New Orleans Bank for Cooperatives?

A. Yes sir.

Q. And you say that it indicates the manner in which the bank uh treated the stocks on its books?

A. Yes sir.

By Mr. SATTERFIELD:

May it please the Court, to save time, that's the only reason I made objection subject to our general objection to this line of testimony as being improper time, I see no reason why this shouldn't be marked as an exhibit; might save us some time.

By the COURT:

117 I was just letting him make the record. I sustained your objection. You've got a letter there that shows—

By Mr. WARREN:

Yes sir.

By the COURT:

How he carried it? I'll let it be marked for identification—

By Mr. WARREN:

Marked for identification.

By the COURT:

Right.

(Marked for identification as Defendant's Exhibit No. D-4).

By Mr. WARREN:

And I offer in evidence all the uh documents which have been given exhibit numbers for the Defendant.

By the COURT:

Is there any objection to any of those documents?

By Mr. SATTERFIELD:

We object, may it please the Court, on the same grounds that—

By the COURT:

No, I mean the documents he previously offered for identification only. He says he's now offering all of them in  
118 evidence and my question is whether or not you have any objection to any of those documents?

By Mr. SATTERFIELD:

May it please the Court, I have no further objection to those heretofore made but I do reiterate on the basis of uh that they should not be introduced in evidence as we objected to them being identified on the ground as stated a moment ago. I assume he's referring to the recent documents.

By the COURT:

How many documents have we got? We've just got to take a little sharper bead on that. How many documents have you got that you are offering in evidence now?

By Mr. SATTERFIELD:

Are you referring, if I may inquire of Counsel, are you referring to those which have been handed to the reporter?

By Mr. WARREN:

Yes sir, and I believe there are three of them, three or four,

By Mr. SATTERFIELD:

Three or four?

By Mr. WARREN:

There were four; there was a check, and an invoice  
119 and a ledger and the letter from Mr. Pendleton.

By the WITNESS:

Right.

By the COURT:

Now my ruling might be quite different. I've admitted the check in evidence. It wasn't offered for identification. It's been admitted in evidence. What else are we talking about? You've got that so marked, haven't you?

By the CLERK:

Yes sir.

By Mr. WARREN:

I didn't understand you, sir.

By the COURT:

The check is marked in evidence.

By Mr. WARREN:

All right, sir, then I offer in evidence uh the documents, the invoice which I thought had been given uh an identification number.

By the COURT:

I think that was marked in evidence too.

By the CLERK:

Yes sir.



By Mr. WARREN:

All right, sir, then the ledger sheet?

120 By the COURT:

Marked in evidence.

By Mr. WARREN:

And uh the letter from Mr. Pendleton, has that been marked as in evidence?

By the COURT:

For identification.

By Mr. WARREN:

I offer that, the letter from Mr. Pendleton which has been given identification, Exhibit Number, Defendant's Exhibit Number 4, I offer in evidence.

By the COURT:

Yes sir, I sustain the objection and that letter may remain marked for identification.

By Mr. WARREN:

Thank you, Your Honor.

#### CROSS EXAMINATION

By Mr. SATTERFIELD:

Q. Mr. Polk, you had mentioned the fact that uh M.F.C. was one of the stockholders and best customers of Associated, and is it not a fact that Mr. Charles McNeil was, for a number of years, both the General Manager of M.F.C. and a Director of Associated?

A. That is true.

Q. And he was succeeded as General Manager of  
121 M.F.C. by Mr. Spivey, was he not?

A. That's correct.

Q. Mr. Ernest Spivey?

A. Right.

Q. Is it not also a fact that at this time, Mr. Ernest Spivey was a Director of the New Orleans Bank for Cooperatives being a member of the Regional Farm Credit Board?

A. He is.

Q. Also he has recently become President of the New Orleans, I mean Chairman of the Board of the New Orleans Bank for Cooperatives, hasn't he?

A. I understand that he has. I haven't seen any documents on it but I understand that he has.

Q. Now during this period of time uh the uh M. F. C. was indebted to uh the New Orleans Bank for Cooperatives in the amounts, as of the end of the year, between uh three to seven million dollars, was it not?

A. Correct.

Q. For instance, in 19 uh 63, the amount of indebtedness was a little over five million dollars at the end of the fiscal year, was it not?

A. Correct.

Q. 1964 it was a little over seven million dollars?

A. Correct.

122 Q. Now during the time that the Associated went into uhh, excuse me. Mr. Polk, is it not a fact that at the time that the Associated went into liquidation that the M. F. C. owed a balance of certificates of indebtedness of Associated to M. F. C. of fifty six thousand a hundred and seventy eight dollars and eighty three cents?

A. You are correct.

Q. And also at that time that there was owed by Associated to M. F. C. as the balance in the patrons' equity investment account of sixteen thousand three hundred and forty two dollars and twenty eight cents?

A. Correct.

Q. Do you not have there a schedule of the uh various amounts uh these amounts and other similar amounts set forth therein?

A. Yes sir, I have.

By Mr. SATTERFIELD:

We'd like to introduce this as an exhibit to the testimony of the witness.

By Mr. WARREN:

Uh I really don't know what it's about, Your Honor, but mostly I object, well, I object to the introduction of the documents on the grounds that it's not relevant and material  
123 here. I don't see where it is.

By the COURT:

What's the materiality of it?

By Mr. SATTERFIELD:

May it please the Court, it demonstrates, with all the facts heretofore testified, this is not an arm's length transaction but a transaction where the three parties were, had mutual officers,

mutual interests, there were mutual indebtednesses between the three, and it was done as a matter of accommodation—

By Mr. WARREN:

There's no evidence in the record to sustain that charge.

By the COURT:

I'll let him pursue that a little bit further.

By Mr. SATTERFIELD:

We offer this as uh an exhibit at this time.

By the COURT:

Well I'll let you pursue that a little bit further before passing on that.

By Mr. SATTERFIELD:

Oh.

Q. Mr. Polk, as a matter of fact, under all the circumstances, this transaction was a matter of accommodation as between M. F. C., Associated and N.O.B.C., was it not?

A. It was.

Q. And done for the accommodation of the parties, was it not?

A. Yes sir.

By Mr. SATTERFIELD:

We offer this, may it please the Court, as an exhibit to the testimony of the witness.

By the COURT:

It may be entered and be marked, be marked for identification at this time because, as I understand it, you are not putting on your testimony now.

By Mr. SATTERFIELD:

Unless Counsel would permit this—

By the COURT:

He hasn't rested.

By Mr. SATTERFIELD:

To be offered in evidence at this time.

By the COURT:

He hasn't rested.

By Mr. WARREN:

I wouldn't mind offering it. I'm going to object to it but he can go ahead and—

By the COURT:

You've already objected to it and I overruled your objection.

125 I'll let it be marked for identification at this time and you can offer it later.

(Marked for identification as Plaintiff's Exhibit No. P-4).

By Mr. SATTERFIELD:

Q. Now, Mr. Polk; as a matter of fact is it not your opinion that C Stock of N.O.B.C., New Orleans Bank for Cooperatives, does not have, actually have a fair market value?

By Mr. WARREN:

I object, Your Honor. He's not qualified to give an opinion on that subject.

By the COURT:

I'll let you ask him a little bit about that and see what he knows.

By Mr. SATTERFIELD:

Q. How long have you been uh uh in connection with M. F. C., or otherwise have you been knowledgeable about or dealing in connection with the N.O.B.C. C Stock?

A. When it was first introduced, I don't recall when that was. I've been familiar with that, I've been familiar with their over-ride requirements, the 15%, the 10%, in fact, I have approved most of the interest payment in our organization. Uh I've been conscious of it ever since it was initiated.

126 Q. Have you been familiar with the use of the stock, the requirement for the payment of an over-ride uh and the entry or issuance of stock ever since the new act went into effect about 1955 or 6?

A. Yes sir.

Q. Are you also familiar with the fact that uh patronage uh refunds or dividends have been distributed in the form of C Stock by entry upon the books of the New Orleans Bank for Cooperatives?

A. Yes sir.

Q. During that period of time, have you become familiar with whether or not there is a fair market value and where dealing is at arm's length for C Stock of the New Orleans Bank for Cooperatives? Have you become familiar with that?

A. I, I'm not familiar that there is a fair market value.

Q. Then would you give us your opinion as to whether or not there is a fair market value when parties are dealing at arm's length on the basis where you have a willing seller who

offers to a willing buyer and neither one being under compulsion to buy or sell?

By Mr. WARREN:

I object, Your Honor, I still don't think the man's qualified. He he's comptroller of that company but uh couldn't  
127 say that by training or experience to make a statement that would be worth to the Court.

By the COURT:

I don't think you have to do much to qualify as an expert on value but I'll let you ask him that question if you want to phrase it a little bit differently to find out what his opinion is of fair market value.

By Mr. SATTERFIELD:

Q. Mr. Polk, from the knowledge and experience you've had which you have outlined, what is your opinion as to whether what, what, if any, amount is the fair market value of N.O.B.C. st, C. Stock where you have a willing seller offering to a willing buyer with no compulsion, where the two act at arm's length?

A. It has no value.

Q. Thank you, sir.

By the MARSHAL:

Anything further?

By Mr. SATTERFIELD:

Just a moment and let me see. I have one more question.

Q. Is not the M. F. C. an exempt cooperative?

A. It is.

Q. Is it, therefore, not exempt from the payment of any income tax?

128 A. It is totally exempt except when we make an error of some minor nature.

Q. And where it is discovered too late to rectify it during the period?

A. That's right.

Q. Then it is a fact, is it not, that whether or not you should enter this C Stock at the face value, or par value, at one dollar or any other amount, has no effect whatsoever upon the taxation of M. F. C., isn't that correct?

A. It does not have any effect at all.

Q. So that if this had been entered at one dollar per share, the tax effect upon M. F. C. would have been identical with the entry thereof at one hundred dollars per share, would it not?

A. Correct.



Q. Now at this time, could you tell us how much uh C Stock was owned by M. F. C. in the term of dollars reference to par value?

A. At what date?

Q. As of May, as of uh uh prior to this particular transaction as of April 20, April 15th, 1964?

A. April the 15th, 1964, the balance was uh four hundred and forty thousand two 0 three forty eight.

Q. Uh since uh this uh transaction to which you have referred as an accommodation transaction between the corporations has taken place, has M. F. C. utilized the C Stock or the allocated surplus thus uh acquired by it in any manner in connection with it's loans from the New Orleans Bank for Cooperatives?

A. No.

By Mr. SATTERFIELD:

Q. If it were not for the fact to which references is made uh from which this accommodation transaction arose with the inter-play between Associated, M.F.C., N.O.B.C. and each other, uh would Mississippi Federated Cooperatives have purchased this stock?

A. We would not without the, may I say, personalities involved, we would not make such a purchase today.

Q. Or that day either, right?

A. No because of the direct cash out-flow and it's value for it's loan value, we would not.

By Mr. WARREN:

Mr. John O'Farrell.

JOHN O'FERRELL called as a witness for and on behalf of Defendant, was sworn and testified as follows:

#### DIRECT EXAMINATION

By Mr. WARREN:

For the record, for the record, let me say that Mr. O'Farrell's name is O apostrophe F-A-R-R-E-L-L.

Q. Please state your name for the record?

A. John O'Farrell.

Q. Where do you live, Mr. O'Farrell?

A. In Chevy Chase, Maryland.

Q. What is your occupation?

A. I'm an Evaluation Engineer.

Q. Do you mean by that that you are employed as Evaluation Engineer?

A. I'm employed by the Internal Revenue Service as Evaluation Engineer.

Q. Where do you maintain your office?

A. In Washington, D.C.

Q. How long have you been Evaluation Engineer for the Internal Revenue Service?

A. A little over eight years.

Q. What is your formal education background, Mr. O'Farrell?

A. Public Schools of West Virginia, Bachelor of Science in Civil Engineering from West Virginia University, and uh Master of Arts in Economics from George Washington University.

Q. Briefly outline your business experience prior to the time that you went to work for the Internal Revenue Service as Evaluation Engineer?

A. I worked uh twenty five years for three different railroads, the Chesapeake & Ohio, the Virginia and the Norfolk & Western. With the Chesapeake & Ohio, I was Assistant Cost Engineer; with the Virginia, I was the Cost Engineer and Assistant  
133 to the General Manager, and with the Norfolk & Western, I was Assistant Superintendent of Transportation.

Q. During the seven years that you have been Evaluation Engineer for the Internal Revenue Service, what has been your duties?

A. I have been assigned to evaluation of problems arising out of litigations.

Q. What, what type subjects were involved in the uh litigations?

A. All types of properties, securities, including stocks and bonds, warrants and patterns, and lease homes, and going concerns, industrial plants, machinery, various uh property items.

Q. Now do I understand that you have uh appraised that sort of property?

A. Yes sir.

Q. During the time that you have been with the Internal Revenue Service, how many uh separate property appraisals have you made, by way of estimate?

A. Several hundred.

Q. Uh amongst the properties which you stated that you have valued or appraisals was uh stocks and bonds, uh how many appraisals of corporate stock have you made since 134 you have been with the Internal Revenue Service?

A. Possibly two hundred.

Q. Have you had occasion to appraise bank stocks?

A. Yes sir, several occasions.

Q. Do you belong to any professional society or group of appraisers?

A. I belong to the Association of Federal Appraisers, The Washington Financial & Analysts Association, The American Railway Engineering Association, and the Geological Society of Washington.

Q. Have you testified before as an expert on property values?

A. Yes sir.

Q. In what Courts, please sir?

A. In uh four Federal District Courts and uh several times in the Tax Court.

Q. Have you appeared as an expert witness in hearings conducted before Government Agencies?

A. Well while with the railroads, I appeared before the Interstate Commerce Commission and the Virginia Corporation Commission.

Q. Do you have an agreement to be paid any special compensation for appearing here to give your witn, to give your testimony in this case?

A. No sir.

135 Q. Will your compensation from the Government be increased if the Government wins this case?

A. No sir.

Q. Have you, at my request or at the request of the uh Internal Revenue Service, made an appraisal of the Class C Stock of the New Orleans Bank for Cooperatives as of the end of the fisc, the end as of the fiscal years ended June 30th, 1958, 59, 60, 61, 62, and 63?

A. I have.

Q. When, approximately when did you complete your appraisal?

A. In June of this year.

Q. What was the purpose of the appraisal?

A. To uh make an estimate of the fair market value of the stock at these different dates.

Q. What do you understand the term, fair market value, to mean?

A. It would be the price or value determined by a willing buyer and a willing seller, neither under compulsion and both with reasonable awareness of the pertinent facts affecting the value.

Q. What are the factors that you took into account in arriving at a fair market value estimate of the Class C Stock of the New Orleans Bank for Cooperatives?

136 A. I reviewed and considered the various factors that are generally considered in the evaluation of stock and they generally include the history of the enterprise, its uh success in maintaining its position in its industry, the conditions of the industry, the conditions of the economy as a whole, the earnings record of the enterprise, the dividend record, its uh asset compensation, its net worth, its management and uh public acceptance and response to it as a uh industrial or financial enterprise, and in particular instances, there are other factors that will be given consideration also.

Q. Based upon all the factors which you have described, what is your considered opinion as to the fair market value of Class C Stock of the New Orleans Bank for Cooperatives as of June 30, 1958, 59, 60, 61, 62, and 63?

A. Taking the six years in order, from 1958 through 1963, and considering a hundred dollar par value per share of stock, I have estimated the fair market value of the stock on these different occasions as three dollars and forty two cents; seven dollars and a half; fourteen dollars and thirteen cents; twenty four dollars and sixty five cents; twenty nine dollars and sixty cents; and thirty nine; thirty eight dollars and sixty five cents.

Q. Did you arrive at that, uh at those values, Mr. O'Farrell, based on, amongst other things perhaps, math, mathematical mechanics?

A. I come to the conclusion that the value indications will be found by determining what was the present value of the return of the principal to the owners of the stock at some estimated

future date. And to determine that; it required some mathematical figuring.

Q. All right, sir.

By Mr. WARREN:

If the Court please, I would like to give the Court a copy of that.

Q. Do you have with you, Mr. O'Farrell, a copy of the computations that you made?

A. Yes sir.

Q. Uh I have handed opposing Counsel for the Plaintiff a copy of the uh computation which you have made and also the Court, and uh I will ask you, Mr. O'Farrell, if you will explain to the Court how you went through the various steps in arriving at the fair market value as to uh which you have come to?

By Mr. WARREN:

Uh and if I may, I would like to have a copy of the  
138 computation marked as an exhibit so that if we have to refer to it, the record will show what we're talking about. I intend to offer it once we are through with it.

By Mr. SATTERFIELD:

May it please the Court, may I inquire if this is offered for identification only, at this time?

By Mr. WARREN:

It is for the purpose of identification only, at this time.

By the COURT:

It may be marked for identification.

(Marked for identification as Defendant's Exhibit No. D-5).

By Mr. WARREN:

And let me say that that exhibit consists of one, two, three, four, five, six, seven pages.

Q. All right, Mr. O'Farrell—

By the MARSHAL:

Will you speak up a little, please?

By Mr. WARREN:

Yes sir.

Q. Mr. O'Farrell, will you, will you explain to the Court uh how you arrived at the, at the figures?

A. The uh Class C stock retirement in the uh rotating  
139 cycle would follow the Class A and the Class B Stock's retirement. So the first uh estimate to be made is when



the Class A Stock would be retired. They were at the time which this is being considered which is June 30th, 19—

By Mr. SATTERFIELD:

May it please the Court, May I request the witness to talk a little more loudly?

By the WITNESS:

Yes, sir.

By the COURT:

Speak up, please sir.

By the WITNESS:

Yes sir. As of June, the 30th, 1958 there was outstanding six million five hundred and seventeen thousand par amount of Class A Stock.

By Mr. WARREN:

Q. Mr. O'Farrell, if I may interrupt you at this time. You say see attachment number one, and uh is that where you got the uh six thousand, or six million, five hundred and seventeen thousand dollars?

A. That's where I have it copied down, yes sir.

Q. Uh where did you get the information shown on attachment number one?

A. From the Annual Report of the Bank for Cooperatives in New Orleans and from the Annual Report of the Farm Credit Administration.

Q. All right, sir. You may proceed. I would just like to point out that those documents to which Mr. O'Farrell has referred, are the attachments with the stipulation.

A. In 19 and 58, there had been two hundred and twenty nine thousand, eight hundred dollars worth of the Class A Stock retired. So taking a conservative view of the future in assuming that no more would be retired in the future years than was retired in the Year, 1958, the number of years required to retire the Class A Stock, if it was evenly retired like it had been in 1958, it would have been twenty eight and six tenths years, which is obtained by dividing the Item A by the Item B. Now during this period, the Gov, the Government was receiving a Franchise Tax on the stock annually and in the Year, 1958, the Franchise Tax was fifty thousand a hundred and one dollars. It was determined by a formula set up in the statute and at a future date when the Class A Stock would be reduced to a certain level which was determinable by simple arithmetic, the

Franchise Stock, the Franchise Tax would start declining because when it reached a certain, certain point, the  
 141 other provision in the law would take effect, and that provision was that the bank did not have to pay to the Federal Government more Franchise Tax than the Principal amount of the stock multiplied by the average interest paid by the Government on the public debt issues made in the year preceding the date on which they had to pay the tax. Now that sounds somewhat complicated but as the Class A Stock declined, uh there would be a stage reached which, on the use of the 5% interest rate, was when the stock got down to a million and two thousand dollars. And the purpose of this rather, what seems to be rather complicated, calculations is to find what effect that decline in the Franchise Tax will have on the length of time that it would take to retire the Class A Stock, and by this calculation, it came up to a half a year.

Q. Mr. O'Farrell, you referred to uh uh attachment number two there for the Franchise Tax. Uh where did you get the uh information contained on that uh attachment?

A. That uh was taken from the Annual Report of the bank and Farm Credit Administration.

Q. All right, sir. Now you in, in this computation of reduction in, of uh Franchise Taxes, you have used a figure of 5%. Now have you made some computation somewhere in, in this exhibit to arrive at that 5%?

A. Yes, sir, I have.

Q. And that, what, what attachment is that, Mr. O'Farrell?

A. That was attachment number three.

Q. Where did you get the information that you used in that, in that attachment?

A. I obtained that from the economic indicator prepared for the joint economic committee of the U.S. Congress.

By Mr. WARREN:

Q. If it please the Court please,

Q. Uh Mr. O'Farrell, you are being handed a copy, a book and what is that book entitled. I can't see it from here?

A. It's entitled, The 1967 Supplement to Economic Indicator.

Q. Can, is that, is that a publication from which you took the figures that appear on uh attachment number three to the—

A. I took all except the ones that have uh small crosses indicating the point.

Q. And uh where did you get the uh figures that uh you used that are represented by the small crosses?

143. A. The Secretary of the Treasury each year furnishes to the Farm Credit Administration a statement of the average interest rate paid on the public debt issue of the preceding year, and these small crosses on the chart were taken from the letter statements from the Secretary of the Treasury. They are made annually to the Farm Credit Administration.

Q. Referring back to the publication, the Economic Indicator, Mr. O'Farrell, can you point out to the Court if there is any special chart in that publication that uh you used specifically in coming up with your 5% interest rate—

A. The one that is designated as Table 33 on Page 121.

Q. All right, sir.

146 By the COURT:

I'll take judicial notice, it's so complex, I don't understand it. What discount figure do you use to get discount?

By the WITNESS:

Sir?

By the COURT:

What percent do you use to discount something to give you a present day value the payment of which is, say, deferred ten years?

By the WITNESS:

It depends on the risk involved. If it's something that's quite assured why you might use a going rate of interest. If it's something very risky, you might use a rate of interest like 12% which would be an interest rate which may be applicable to a poor second mortgage if you were buying it at that time.

By the COURT:

I was trying to find out what discount you used on—

147 By the WITNESS:

I used 12% on the first year.

By the COURT:

On the Year, 58?

By the WITNESS:

Yes sir.

By the COURT:

Did you use a different one for the other years?

By the WITNESS:

I used 10% for the second year, nine for the third, eight, seven, and six and I arrived at them in, you might say, a reverse order. I figured that at the end of six years you had enough experience that you were getting down to a normal interest rate. So taking 6% for the sixth year, I, working backwards, made a little higher interest rate discount for each of the preceding years because of the lack of historical prospective to project from.

By the COURT:

What is that, trigonometry that you employ?

By the WITNESS:

No sir.

By the COURT:

Is it higher calculus?

By the WITNESS:

148 Algebraic uh algebraic uh formula ordinarily is the basis of the uh compound interest.

By the COURT:

I've seen several books on it and after I got through examining them, I never have understood the formulas that they throw at you.

By the WITNESS:

Well the basic formula in discounting is the uh compound interest formula which is uh one dollar today predicted in the future would be one plus the interest rate raised to a power which is equivalent to the number of years in which you are determining the compound interest factor.

By the COURT:

All right.

By Mr. WARREN:

Q. Uh you have just gone through an explanation of Item Number E on your exhibit there, Mr. O'Farrell—

A. Yes sir.

Q. And uh you've got what looks to me to be a rather monstrous mathematical tool, or whatever you would prefer to call it; uh uh if this computation uh were not made uh at all and you said that that computation was used to show how the falling off of the Franchise Tax would shorten the period  
149 of the payout for the A Stock, did you not, sir?

A. Yes sir.

Q. If you didn't, if you didn't even take that shortening into account, would that affect the result which you came to in any substantial way.

A. Uh not substantially.

Q. All right, sir. Will you proceed then on through your exhibit and tell us how you came to the conclusion that you did?

A. Uh this uh adjustment to the 28.6 years found in Line C above brings the years required to retire the Class A Stock down to 28.1 years. That's by applying this, uh these assumptions and reasoning that we find above it. In the Class B Stock, at that time, would be retired succeeding the Class A Stock but after the Class A Stock is retired, you would not only have a two hundred and twenty nine thousand eight hundred dollars that was available for retiring Class A Stock in 1958, but you would also have the Franchise Tax that is being expended in 1958 which, after the retirement of Class A Stock, would be added to the two hundred and twenty nine thousand eight hundred to get the amount each year that would be applicable to the retirement of the Class B Stock, and the Class C Stock

sub, subsequent. Now the two twenty nine eight hundred plus the fifty thousand hundred and one Franchise

150 Tax gives a total of two hundred and seventy nine thousand nine O one applicable each year to the retirement of the Class B Stock. In 1958, there was three hundred sixty thousand six hundred and sixty six dollars in principal amount of Class B Stock outstanding. Dividing that by two hundred and seventy nine thousand nine hundred and one, which is available each year for the retirement of stock, and gave a period of one and three tenths years for the retirement of Class B Stock. At that particular time, 1958, there was seven hundred thousand eight hundred and fifty of Class C Stock plus allocated surplus on the books of the New Orleans Bank. To retire that much stock at the rate previously given of three hundred and, of two hundred, pardon me, two hundred and seventy nine thousand nine hundred and one dollars per year, would take a period of two and a half years. So in retirement of the three classes of stock would require twenty eight and one tenth year for the A, one and three tenths year for the B, and two and a half years for the C. Adding them all together the total period to the, for the retirement of all this stock that were outstanding as of the end

151 of the year, 58, would have been thirty one and nine tenths years. As explained previously, in arriving at the



discount, this being the earliest year in which the retirement is being projected, I used a high risk interest rate of 12% for discounting back to obtain present value of the future retirement of the Class C Stock. The Class C Stock would be retired at a hundred dollars a share but it would not be retired for thirty one and nine tenths years. So discounting back thirty one and nine tenths years at a rate of 12% means that each dollar that you are considering, thirty one and nine tenths years from now, has a present value today of point 0 2 6 9, which is 2, uh 2 point 6 9 cents for every dollars. As indicated on the attachment number two, each share of Class C Stock had associated with it 27% of its face amount in allocated surplus. So for each share of Class C Stock that would be retired, there would be 27% of as much in allocated surplus. So instead of retiring a one dollar Class C Stock thirty one and nine tenths years from this date, the owner would be obtaining the retirement of a Class C Stock plus it's associated allocated surplus which would increase the amount that he would receive by 27%. So taking this factor of 2 point 69 cents per dollar that would be received on 152 the retirement and multiplying it by one point 27 to make allowance for the allocated surplus that would be associated in the retirement, the factor is increased to three point four two cents for each dollar; and for each hundred dollar face amount of Class C Stock, the present value would be three dollars and forty two cents, or a hundred times three point four two cents.

By Mr. WARREN:

Q. Now that, you've gone through the Year, 1958, have you not, Mr. O'Farrell?

A. Yes sir.

Q. Well, did you make a similar computation for the other years?

A. I did.

Q. And where is that computation to be found?

A. It is shown on attachment number four.

Q. Will you explain to the Court what attachment number four is?

A. Attachment number four, without having all the details is set up in exactly the same order as the first sheet, which I made the explanation, A, B, C, D, E, and the first column in that

uh attachment number four has the same resulting figures that are shown on the previous sheet that has a ten at the top of it.

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By Mr. SATTERFIELD:

May it please the Court, now that the explanation has been made of the basis of this calculation, we object to this testimony and move to exclude that heretofore given on the grounds, first, that it is totally inapplicable to Class C Stock of the New Orleans Bank for Cooperatives as has been shown and described in the stipulation of evidence. Second, that they uh omit from it all pertinent factors having to do with the determination of the time within which retirement may be made other than the one factor of the amount that was retired during that one year. Third, it omits therefrom uh the elements which are required to be considered under the regulations of the Internal Revenue Service being, as described in Revenue Ruling Number 50 dash 60 applicable to stocks of this kind and uh also, that it has not been shown that any of the, has not been shown that the results here arrived at have any true relation to a fair market value, nor to a true uh or actual value for any purpose of the stock here involved. And further grounds, it's immaterial, incompetent and irrelevant. We will point out some six or seven of the items which have been omitted during cross examination unless the Court would like to have them

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at this time.

By the COURT:

I'll overrule your objection. I think you are talking about weight to be assigned to the evidence, not incompetence and I'll overrule your objection.

By Mr. SATTERFIELD:

May it please the Court, would it be appropriate uh in order to save time of the Court that it may be considered that this objection applies to all testimony by this witness?

By the COURT:

Well I don't know that it would apply to all of it. I don't know what his further testimony will be. That would be my ruling if it's the same situation as is now before me.

By Mr. SATTERFIELD:

Thank you, sir.

By Mr. WARREN:

Q. Mr. O'Farrell, will you briefly explain to the Court what attachment number five—

By the COURT REPORTER:

You are dropping your voice and I can't understand what you are saying.

By Mr. WARREN:

All right.

155 Q. Will you please explain to the Court what the meaning of attachment number five to the exhibit is?

A. This is a graphing of the data that's given from the first explained sheet headed ten, and what is given on the attachment number four, and it is intended to originally show this is a straight line retirement projection except that when you get down to a period of three, four, or five years from the time the Class A Stock is retired because of the effect of the, because of the effect of the Franchise Tax, you have another rate of retirement from then on, and that's shown by the little uh duplication of lines down near the vertical line that goes up near the middle of the page. It's more or less a refinement to illustrate how the development was made. It isn't essential to the development but it's explanatory in a graphical manner.

Q. Mr. O'Farrell, uhh your testimony as to value, it appears is predicated in large measure upon a predictable uh retirement date for A Stock. Is that true?

A. I, I estimated the retirement date for each of the stocks I thought it was predictable.

Q. Uh why, why, why did you uh think that the retirement of the A Stock was predictable?

156 A. Because it was permitted by law when the Class A Stock was retired, the cooperatives would be in relatively complete charge of the Bank for Cooperatives, so it would have been to their self-interest to have retired this stock, so I thought it would be normal to assume that they would retire it and also, it was part of the policy of the bank, of the Bank for Cooperatives—

By Mr. SATTERFIELD:

Object to the testimony of this witness as to any policy of the Bank for Cooperatives or self-interest. He is not qualified as an expert on the self-interest or policies of the Banks for Cooperatives of the United States or other banks either.

By the COURT:

I understand him to simply be talking about what he took into consideration. I don't think he's trying to establish any policies. Overrule the objection.

By Mr. WARREN:

Q. What, when you say it would have been in the self-interest of borrowers to retire the uh Class A Stock so that the C Stock could be retired, uh what do you mean by self-interest, Mr. O'Farrell?

A. The owners of the Class C Stock were the cooperatives. The cooperatives would be in, as I said, relatively free  
157 to operate the bank after the Class A Stock is retired. The Class C Stock didn't pay them any return annually. The only way they could get their money back out of Class C Stock was to retire it. They would have in their hands the power to retire it, it would be to their advantage to retire it, and it is logical to assume that they would retire it.

Q. Uhh why do you say it would be to their advantage to retire it?

A. Because they would be getting cash for something that was giving them no return.

Q. Now you said, I believe, that in addition to this self-interest figure, that it was, it was the policy—

A. Policy of the Bank for Cooperatives.

Q. To do what?

A. To retire the Class B and the Class C Stock in rotation after the Class A Stock is retired.

By the COURT:

160 This was marked for identification, D-5. Do you make an objection to that?

By Mr. SATTERFIELD:

May it please the Court, we object to the introduction of this on the same grounds that we objected, and moved to exclude the evidence as to the first page thereof and on the  
161 further ground that the witness has not, in any manner, testified concerning, verified, or uh given evidence which would support the compilations affecting any years other than the year ending on June 30th, 1958, whereas the attachment number four reports with varying factors involved to affect the years ending June 30th, 59 through 63 inclusive. The witness has not verified or testified concerning those matters and such evidence has not been sustained in any way.

By Mr. WARREN:

If the Court please, uh I asked the witness uh after he had run through the front page, that is, the page marked ten at the top, after he had gone through that page, I asked him if that computation related to the Year, 1958, and he said it did, as I recall. I then asked him to uh if he had made a similar computation uh for the Years, 1959, 60, 61, 62, and 63 and uh I believe that his statement was that he used figures shown on attachment number four in the very same manner that he had uh used the figures uh on, on the first page. He just jacked those, took the figures out that are on page ten and put these uh other figures in.

By the COURT:

162 I'll overrule the objection and let it be marked the same corresponding number, in evidence.

(Marked for identification now entered into evidence and marked as Defendant's Exhibit No. D-5.)

By Mr. WARREN:

Your witness, Mr. Satterfield.

#### CROSS EXAMINATION

By Mr. SATTERFIELD:

Q. Mr. O'Farrell, in uh arriving at these uh computations or calculations which you have made, I believe that you stated that these have not been related by you to any known sales upon the market, or any known sales of the C Stock of the New Orleans Bank for Cooperatives. Is that not correct?

A. I didn't have knowledge of any sales that were comparable in that period.

Q. Then your answer to my question would be yes, isn't it? Is that correct, sir?

A. No answer.

Q. You'll have to answer out loud so they can hear you.

A. No answer.

Q. Your answer would be yes?

A. Yes sir.

162 Q. Thank you. Now, there of course, are different types of uh corporations that are involved in the financial fields in the United States and in connection with



the evaluation of the different types of securities of corporations for investment or other purposes when there are not available any sales known upon the market place, uh what is the nature of the type of corporation that is referred to in financial parliament where that is not available but, nevertheless, securities are being valued for state tax purposes, gift tax purposes, or any valuation purpose. What are they generally called?

A. I don't know whether you are referring to comparable sales or not.

Q. No, no comparable sales. I am referring to those where you do not have a history or knowledge of sales. What term is used to refer to that type of corporation?

A. One of them is closely held corporation.

Q. Then that would apply, that is what would apply to this case, would it not?

A. Uh not necessarily. It is a corporation in which the securities were not marketed but I am not certain that it would technically be called a closely held corporation.

Q. Generally speaking though because of it's nature and being compared to those where market sales are held, it  
163 would generally fall within that classification for valuation purposes, would it not?

A. I, I think in each instance you have to consider your corporation separate in the light of the facts that are available, but I would say that the analyst would probably investigate it the way he would investigate a closely held corporation stock and he might investigate in some other manners also.

Q. But he would investigate it the way he would investigate stock in a closely held corporation, would he not? Including further investigations of further factors. Is that not right?

A. He could very well do it if he wished but he needn't necessarily be confined to that type of investigation.

Q. But that would be a correct method of analysis, would it not, Mr. O'Farrell?

A. It would be one tool he could use.

Q. Yes sir. Now uh as a matter of, you stated that one of the elements which you considered in arriving at the valuations here was that uh of general economic conditions and also the financial history of uh financial, I guess the word is history of corporations and businesses in the United States. And then you also have referred to using that in connection

164 with value. When you refer to the economic conditions, you are referring, are you not, both to the actual conditions of business and to the value of a dollar as reflected by its use in the financial world and otherwise in the United States?

A. Yes sir, all the different factors that affect the economic life of the country.

Q. And, of course, one that affects us all is the varying value of the dollar from time to time in the United States. Is that not correct?

A. That's one of them.

Q. Now then uh is it not true that uh in the uhh in determining the value, oh, excuse me. Uh I believe you testified to begin with, did you not, that your calculations here were made to determine and did reflect the fair market value of Class C Stock of the New Orleans Bank for Cooperatives?

A. Yes sir.

Q. And uh then it is not a compilation which is attempting to reflect what might be called the general value or the uh basic valuation for business purposes other than market but is a calculation to arrive at fair market value. Correct?

A. Fair market value only.

Q. Now in your calculation, in your calculation, in 165 each of the years involved, if you will turn, and may I inquire the number of this exhibit?

By the CLERK:

Which one? D-5.

By Mr. SATTERFIELD:

Exhibit 5.

By the CLERK:

D-5.

By Mr. SATTERFIELD:

Q. Exhibit D-5, you have included in each compilation affecting each year a factor which is referred to on the first page of Exhibit D-5 as the ratio of Class C Stock issued plus surplus allocated year ending 6-30-58, Class C Stock alone, attachment two, varying, of course, from year to year as that relationship varied. Has that not been concluded?

A. Yes sir.

Q. Now you are, you have been with the Internal Revenue Service how long?

A. A little over eight years.

Q. A little over eight years. You are familiar with the fact that an examination by an Agent at the District level as a result thereof he will frequently propose deficiencies?

A. I am familiar that they make uh examinations at 166 that level. I don't know of anything else concerning your question. I mean that's uh—

Q. Are you familiar with the fact that in these cases that there was not any proposed deficiency in relation to the allocated surplus or the amount involved therein or the dollars involved therein?

A. I'm not uh, I wasn't interested in the tax consequences. All I was trying to do was define what would be obtained at the end of this period by the holder of the stock and to obtain that, I had to make allowance for the allocated surplus which was in the policy and practices of the bank associated with the C Stock.

Q. You heard the testimony yesterday that, that insofar as allocated surplus was, uh the President of this bank was concerned, that it is the first source after the current earnings and reserve for losses to which resort would be made in case of necessity and that they have never notified any of their patrons of the allocation of any surplus to them, did you not?

A. I don't uh remember in the words you've used, the testimony but I don't take exception to it because as far as I remember, it was along that line.

Q. Also having been preparing yourself for testimony in this case, you are familiar, are you not, with the fact that in 167 all of the amounts involved as affected by the pleadings, and all other documents, the claim for refund and all other matters herein, that the number of dollars reflecting the allocated surplus is not involved in any issue or any pleadings in this case. Are you not familiar with that?—

By Mr. WARREN:

I object, Your Honor. He has asked the witness uhh a question concerning all the records and pleadings involved in this case and has not specified if he wants to specify what papers he's talking about, he ought to tell the witness what he's talking about so that he can be responsive.

By the Court:

I think you better rephrase your question. There are very few witnesses who know anything about pleadings.

By Mr. SATTERFIELD:

Q. Now, Mr. O'Farrell, in preparing to testify, after eight years of testimony for the Internal Revenue Service uh in matters of this kind, did you familiarize yourself at all with the complaint filed in those two cases in this Court?

A. I didn't do it in enough detail that I can say what is in the pleadings.

168 Q. You did familiarize yourself with it generally, did you not?

A. Not, not in enough detail that I could be quizzed on them.

Q. Did you uh read them at all?

A. I read some of them.

Q. Did you read the complaints in these two cases?

A. Not in full.

Q. Which portion did you read?

A. I don't remember. It was several months ago and so I can't tell which. I am particularly interested in the papers from their effect on the valuation on something that I'm not interested in the legal argument unless it affects the valuation. I'm not interested in a lot of the other factors unless they affect evaluation, so with the mass of papers that are available, the appraisal has to be somewhat selective.

Q. Then you did read that portion of the complaints that had to do with the dollars involved and the evaluation of the amounts involved, did you not?

By Mr. WARREN:

I object, Your Honor. The witness has stated that he didn't recall at this point in time what he had read in those complaints.

169 By the COURT:

Well, I'll let him answer. Overrule your objection. Go along.

By Mr. SATTERFIELD:

Q. Would you answer, please sir?

A. I did read the, you say I did read the—

Q. Portion of the complaints which had to do with the number of dollars involved and would affect the valuation of the amounts of stock here involved.

A. I don't remember the amounts in money but but I read concerning the amount in deficiency in the, uh in the issue between the Government and the uh Plaintiff of the uh on the money involved in it.

Q. You also read that similar portion for the claim for refund which was attached to the complaint as a part of the Government file, did you not?

A. I may have. I don't remember.

Q. Is it the best of your recollection that you did?

A. I, I don't know that I did.

Q. Well now as a matter of fact, uh Mr. O'Farrell, by this somewhat circum, circumlocution, uh you have brought into this case as a part of the issues in this case, uh every dollar as shown by attachment number two of Exhibit D-5, every dollar which was uh allocated surplus to uhh the uh patrons for 170 the years involved, have you not?

A. Yes sir.

Q. And by so doing, if the Government was to recover upon the basis of your report, it would require the payment of tax not only upon the C Stock involved but also upon the, not only upon the valuation of the C Stock involved, as you calculated it, but also upon the valuation of the allocated surplus, as you calculate it, would it not?

By Mr. WARREN:

I object, Your Honor, he's asking the witness to make a legal conclusion on the, based on recovery. This witness has testified with respect to his opinion as to the value of this subject stock on particular dates. What the Government is going to recover, or, or what the taxpayer is going to recover or not recover, he's not testified with respect to it and neither has he, he uh, he's not been held out as an expert in the field of recomputation of taxes and uh I feel, therefore, it's an improper question and object to it.

By the COURT:

He's on cross examination. If he knows, he may answer.

By Mr. SATTERFIELD:

171 Q. Would you answer the question, please sir?

A. I've forgotten the question. You'll have to repeat it.

By Mr. SATTERFIELD:

Could you read the question to the witness?

By the COURT REPORTER:

Yes sir. It's about a half a page long. And by so doing, if the Government was to recover upon the basis of your report, it



would require the payment of tax not only upon the C Stock involved but also upon the, not only upon the valuation of the C Stock involved as you calculated it, but also upon the valuation of the allocated surplus as you calculated it, would it not?

By Mr. SATTERFIELD:

Q. Would you answer the question now, please sir?

By Mr. WARREN:

I would like to interpose another objection; he has stated, the question is if the Government were to recover. The Government does not seek to recover here. It's, it's the taxpayer who seeks to recover.

By Mr. SATTERFIELD:

May I say if the Government were to win the case?

By the COURT:

I understand. Overrule the objection.

172 By Mr. SATTERFIELD:

Q. Would you answer it, please sir?

By the COURT:

You may answer.

By the WITNESS:

The value of the C Stock, at the time which I appraised it, was associated with the allocated surplus at that time, and if a tax is applied to the C Stock at the time I appraised it based on the values that I estimated for it, the tax would also be on allocated surplus. That is all I can say for it. I took it into consideration when I appraised the C Stock, so if the tax is on the basis of what was in it when I appraised it, there would be a tax on the allocated surplus.

By Mr. SATTERFIELD:

Q. Then uh referring to the first page of Exhibit D-1; uh if there is before the Court only issues as to the C Stock involved, the valuations which you have placed on that issued in 1958, as of June the 30th, 1958, of three dollars and forty two cents uh would not be a correct valuation of the C Stock alone, would it, as distinguished from the allocated surplus?

By Mr. WARREN:

173 I object, Your Honor. I don't understand the question and I don't believe that the witness can understand it.

By the COURT:

Well, we'll let the witness say whether or not he understands it. If he don't, you may ask for clarification. Otherwise, overrule. Go along.

By Mr. SATTERFIELD:

Q. Mr. O'Farrell, what is your answer, please sir?

A. Will you have the question read?

Q. I'll re-state it for you. Is it not a fact that turning to page one of Exhibit D-5, and turning to the figure at the bottom thereof, three dollars and forty two cents which uh is there stated as the fair market value of the Class C Stock, and so forth, if that the, if that were limited to the fair market value of Class C Stock as distinguished from allocated surplus, it would not be three dollars and forty two cents, but would be a lesser amount, would it not?

A. It wouldn't be fair market value of C Stock if it was changed from what it is here, according to my estimate.

Q. Your answer to my question this is yes, it is not? I  
174 would like you to answer the question yes or no and then explain, please sir. Be glad to read the question to you again if you can't answer it now. Would your answer be yes subject to explanation made?

A. I would like to have the question read again and I'll be sure.

By the COURT REPORTER:

Is it not a fact that turning to page one of the Exhibit 5, and turning to the figure at the bottom thereof, three dollars and forty two cents which is there stated as the fair market value of the Class C Stock, and so forth, that if that, that if that were limited to the fair market value of Class C Stock as distinguished from allocated surplus, it would not be three dollars and forty two cents but would be a lesser amount, would it not?

By Mr. SATTERFIELD:

You may answer and——

By Mr. WARREN:

Your Honor, I would——

By Mr. SATTERFIELD:

Q. Explain later:

By Mr. WARREN:

I would object to that. The question is, is it not a fact,  
175 a long statement and so forth, and then he says, is it not

true? The witness can't possibly answer a question like that with uh; and, and it be meaningful, If he says yes, we can load into that, and so forth, anything we want to. So I object to it. I don't think the question is a meaningful question and can be answered or is subject to an answer.

By the COURT:

Let him answer if he can.

By Mr. SATTERFIELD:

Q. Your answer would be yes, would it not, subject to the explanation you gave a moment ago?

A. The three forty two is my estimate of the fair market value of the Class C Stock.

Q. Would the answer to my question be yes or no, please sir?

A. And it contained all elements that made up the fair market value.

Q. I repeat my question, Mr. O'Farrell, and ask you to respond yes or no, and then explain. Is it not a fact that if the valuation utilized in connection with uh Class C Stock for the year ending June 30th, 1958 as calculated on page one of Exhibit D-5 was limited to a valuation of Class C Stock as distinguished from, and not including, allocated surplus,  
176 then the amount of three dollars and forty two cents would be reduced substantially. Is that not true? Would you answer yes or no and then explain?

A. If you could make that kind of appraisal and get a, something that would be useful, it would be less.

Q. It would be less. Thank you, sir. Now would you turn, please, to your attachment number four and I refer you now to the last line of figures beginning with uh the column headed, June 30th, 1958, the line being designated, Q, and I refer you to the number of dollars appearing in, with reference to succeeding years as therein shown; being seven dollars and fifty cents for the year ending June 30th, 1959; fourteen dollars and thirteen cents for such year ending 1960; twenty four dollars and sixty five cents uh for the fiscal year thus ending in 61; twenty nine dollars and sixty cents for the fiscal year thus ending in 1962; and thirty eight dollars and sixty five cents for such fiscal year thus ending in 1963. Is it not true that the testimony which you have just given concerning the year ending June 30th, 1958 related to the figure of three dollars and

forty two cents likewise applies to each of these figures or valuations for each of these years?

Q. To be sure that I understand what we're talking about, it wouldn't be appraisal of C Stock but it would be less.

Q. Well, you say it wouldn't be appraisal of C Stock, you mean that if you include in the C Stock the allocated surplus, do you not?

A. The allocated surplus is part of the value element in C Stock.

Q. Would you answer my question, please sir. My question is, what you are saying is that it would be, that it would be appraisal of C Stock if you included in C Stock the amount of all, allocated surplus. Is that not true? Please answer for the record.

A. The appraised value of C Stock includes allocated surplus, yes.

Q. Your appraised value of C Stock includes allocated surplus?

A. That's right.

Q. And that is true for each of the years?

A. Yes sir.

Q. Now, Mr. O'Farrell, as an analyst of values, when it is shown as it is shown in this case by testimony and stipulation that there has been no notification whatsoever to the borrower of the existence of this allocated surplus, that there has been no type or form of Class C Stock utilized in connection with the allocated surplus, when it's been testified it would be first resorted to subject to matters I mentioned a moment ago, in case of losses and it may be disposed of differently or separately, may be, may be treated differently or separately by the bank as shown by the stipulation and testimony herein, would you tell this Court that even if it were proper to include it under the pleadings that in your opinion the allocated surplus has the identical value of C Stock?

A. I haven't said that the allocated surplus had the identical value as the C Stock.

Q. Beg pardon?

A. I haven't said that the allocated surplus had an identical value with the C Stock.

Q. You have used identical dollars in reaching your calculations, have you taken the number of dollars allocated surplus each year, the number of dollars of C Stock each year and placed them together for all purposes of calculation? Would you answer yes or no and then explain?

A. I have been uh—

Q. Would you answer yes or no and then explain?

A. I have added the allocated surplus to the C Stock.

179 Q. Both at the number of dollars shown on the uh records that are in the case, have you not?

A. In determining the present value of the C Stock.

Q. I see. Thank you, sir. Now would you please turn to page four of uh attachment four, I'm sorry, of Exhibit D-5 and do I understand your testimony to be to this Court that in your opinion as an evaluation analyst that the value of C stock for allocated by the New Orleans Bank for Cooperatives within the period of, the period of seven years has increased as to the stock issued in such year, eleven times or eleven hundred percent—

By Mr. WARREN:

May it please—

By Mr. SATTERFIELD:

To be from three dollars and forty two cents to thirty eight dollars and sixty five cents?

By Mr. WARREN:

I object, Your Honor. Counsel has asked the witness if he, Counsel, understands, and this witness can't say what Mr. Satterfield understands.

By the COURT:

I'll overrule your objection. I think he understands the question. Go along.

By Mr. SATTERFIELD:

180 Q. Would you answer the question?

A. On the basis of the present value of a dollar in the different periods, the amounts have increased from three dollars and forty two cents to thirty eight point sixty five cents which is at least more than ten times as much.

Q. Based upon the present value of a dollar, that which may be reflected by certain indices, is that not true?

A. This is based on the uh factors that were reported by the banks at that particular time.



By Mr. SATTERFIELD:

May I see the exhibit which is the Economic Indices? It's the yellow book there. If the Court will indulge me just one moment.

By Mr. WARREN:

If—

By Mr. SATTERFIELD:

May I inquire the number of the exhibit from you, please sir?

By the MARSHAL:

D-6, identification.

By Mr. SATTERFIELD:

Q. Would you please turn to page seven of Exhibit D-6 referred to as Economic Indices—

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By the COURT:

That's not in evidence, Mr. Satterfield. That's the one that they picked out page one twenty one to offer in evidence, so if you want to put it in evidence, you may use it but it hasn't been even offered as yet.

By Mr. SATTERFIELD:

I will ask that it be uh marked for identification at this time. We will offer it at a later time.

By the COURT:

All right, what page is that?

By Mr. SATTERFIELD:

May I ask that uh the Clerk mark page seven of this document for identification at this time?

By Mr. WARREN:

If it please the Court, if Counsel would like, I will join him in a joint stipulation that the entire uh publication may be made part of the record for whatever purpose that uh we may want to use it.

By Mr. SATTERFIELD:

Please the Court, I believe it would burden the record.

By the COURT:

I feel like it's the trial Court's duty to keep a record  
182 down within permissive ranges and I don't think it would be proper to send the whole book in at all but I now let page seven be marked for identification for the Plaintiffs. I give you the same privilege I gave the Defendant, that is, to add any other pages that are necessary to be added so that we don't get so many pages in there that nobody is going to read them.

By Mr. SATTERFIELD:

Thank you, sir.

By the COURT:

Might as well be realistic about this thing. You give the Judges a big stack of books and I can tell you they're not going to read it.

By Mr. SATTERFIELD:

Thank you, sir.

(Marked for identification as Plaintiff's Exhibit No. P-5).

By Mr. SATTERFIELD:

Could you give me the number of the exhibit marked for identification?

By the CLERK:

P-5.

By Mr. SATTERFIELD:

P-5.

183 Q. Uh turn to exhibit P-5, you find there, do you not, that the value of the dollar as reflected by this publication in 1958 was placed at a hundred percent, was it not, or dollar for dollar, right? That is the base point for this publication?

A. That is the price defective, uh used in this tabulation, yes sir.

Q. And uh between that date and uh 1963, 58 to 1963, uh there had been a reduction of the value of the dollar to the extent that the dollar, as of 1958, it would take a dollar and a hundred, a hundred dollars as of 1958, it would take a hundred and seven point two dollars to purchase the same amount of goods in the United States, or there was that variation in the value of the dollar, was there not?

A. Yes sir, according to the table.

Q. That is a difference of a total of some seven percent reduction in the value of the dollar, not exactly but almost. Right?

A. Close, close to that, close to that.

Q. Now uh in your, by the way, while you have that before you, would you turn uh back to the year which was utilized in your attachment number three concerning the upward trend of uh interest rates and in that connection, turn to the Year, 1946. And what was the index that year of the value. I mean of the value of a dollar as compared to 1958? That's on  
184 page seven being the exhibit that I just referred to.

By the COURT:

What number?

By the CLERK:

P-5 for identification.

By Mr. SATTERFIELD:

P-5:

By the WITNESS:

Sixty six point seven.

By Mr. SATTERFIELD:

Q. Sixty six point seven. And then the value of the dollar decreased so that in 1958, it took one dollar to purchase goods and service in the United States which in 1946 could have been purchased by sixty six and two third's cents. Isn't that true?

A. Yes sir.

Q. Or devaluation of approximately one third or a little more depending on how you apply it from the beginning to the end uh backward, is that not right?

A. Yes sir.

Q. Now you have made these calculations, have you not, based upon the uh factors shown on page, or attachment number four as explained by the first page of your Exhibit D, the explanation on page one of Exhibit D in applying to each of the years shown on attachment four. Isn't that right?

185 A. Yes sir.

Q. Now I, reference was made yesterday to the fact that uh when there was set up a goal or plan of the retiring of A Stock by the New Orleans Bank for Cooperatives about uh 1957 or 8, I believe it was, or thereabouts, that the bank had been in business since 1933 or more than twenty years, of course, subject to the amendment of 1955, and you were familiar and are familiar with the fact, are you not, that uh these banks have been in existence since the Farm Credit Act of 1933 subject to the several amendments which have been thereafter adopted?

A. Yes sir.

Q. Now you have adopted as the percentage utilized in the discounting of the value of money for the Year, 1958, uh the uh percentage of twelve percent at the time when the bank had been in existence and had experience in the banking field for twenty five years, I believe you testified that percentage is a

correct percentage and you have so utilized it in this uh uh presentation and analysis, have you not?

A. Yes sir.

Q. Then that percentage itself nor any of the succeeding percentages are not of themselves related to any of the other  
186 factors involved which are set forth on this page, are they? They are simply chosen by you as your thought of a correct percentage?

A. Yes sir.

Q. All right.

A. Yes sir.

Q. Now would you please, we have here handed to Counsel a publication known as Stanford Research Institute Growth Factors which actually is simply a discount table or compound interest table. Would you please turn to attachment number four of uh Exhibit D-5 to the Year, 1963, and without changing any other factors, would you please utilize twelve percent as the percentage as utilized on line M instead of six percent, and then advise us what the uh result would be in line N which is described as the present value of one dollar at M rate of interest one number of years?

A. I'm not familiar with this tabulation. I have one of my own here by, used by the Agricultural Department that uh covers the same—

Q. If I may see it very briefly—

A. And probably save time.

By Mr. SATTERFIELD:

Just take a moment, may it please the Court.

Q. I will rephrase my question. Uh using a proper  
187 table reflecting the factors here involved, would you apply the item of twelve percent instead of the item of six percent to the figures shown in the last column on attachment four of Exhibit D-5 being for the year ending June 30th, 1963, and tell us what would be the result instead of the point three 0 six five now appearing in line N?

A. Without checking, I'd say twelve dollars and sixty five cents.

Q. Beg pardon?

A. Without checking it, I'd say twelve dollars and sixty five cents.

Q. Is it not a fact that it would be seven dollars and seventy six cents? Would you check that again, please sir? I mean review your study there?

A. I still have twelve dollars and sixty five cents.

Q. Beg pardon?

A. I still have twelve dollars and sixty five cents.

Q. Would you say that again, sir, I didn't hear it?

A. I still have twelve dollars and sixty five cents.

Q. I see. Now that is in lieu of which figure?

A. Uh thirty eight dollars and sixty five cents.

Q. That was not my question, uh Mr. O'Farrell. I asked you to apply it to line M the figure being thirty dollars and sixty five cents, not to line P, which I did not mention to you.

188 I'm asking you to apply it to the figure representing C Stock without the, including therein your opinion of some value of allocated surplus, then would you please—

A. Ten dollars and four cents.

Q. Ten dollars and four cents. Now would you please uh also apply the twelve percent to the figures in the column for the Year, 1962, and give us the results insofar as line N is concerned, that being as described in my former question.

A. Eight dollars and thirty six cents.

Q. Eight dollars and thirty six cents.

A. Yes sir.

Q. Would you do the same, please sir, for the same line as to 1961?

By Mr. WARREN:

What line are you talking about, Mr. Satterfield?

By Mr. SATTERFIELD:

Line N I referred to. I'll be glad to do it each time.

Q. I'm referring to line N as it results, I'm referring to the application of the percentage shown, application of or a percentage of twelve percent in lieu of the percentage shown in the column. What would be the result, please sir, as to 1961?

189 A. Eight forty six.

Q. Similarly apply it to the column representing June 30th, 1960?

A. Five eighty two.

Q. Five dollars eighty two cents. Okay, sir. As to the one involving 1959?

A. Three forty six.



Q. Then as a matter of fact, Mr. O'Farrell, uh if we do not include the allocated surplus and if we apply the factor of twelve percent that you applied to the year ending June 30th, 1958 as uh the proper factor, then the valuation of the Class C Stock would be in the number of dollars per share you have stated upon the assumption that I have stated, would it not?

A. On the assumption that what, sir?

Q. On the assumption that I have stated. That is, the application of this of this twelve percent and the disregarding of any alleged value of allocated surplus, it would be these results, would it not?

A. On the twelve percent discount, it would be the figures that I have given you, yes.

Q. Yes sir. Now, Mr. O'Farrell, are you familiar with the compilation, a copy of which you kindly handed to Mr. uh Verlander this morning, I believe, which is referred to 190 as rates of Return on Investments of Common Stock 1926 to 1965, sponsored by Merrill, Lynch, Pierce, Fenner and Smith, Incorporated, the pamphlet which you handed Mr. Verlander being an excerpt from the full compilation entitled, quote: Rates of Return on Investments in Common Stock; year by year record 1926 to 1965?

A. Yes sir.

Q. Is that considered authoritative in the financial field?

A. Not necessarily authoritative. It's another uh—

Q. Beg pardon?

A. It's a study of the, of the growth factors in the equities on the New York Stock Exchange.

Q. Is it not considered to be a reliable study, one that may be considered in arriving at the valuation of stock and the results in connection therewith?

A. As far as I know, it's authoritative for what it purports to be which is a uh statistical analysis.

Q. Thank you, sir.

Would you hand this to the Judge and opposing Counsel? Will you hand this to the witness? Excuse me, may I uh hand him one?

Q. You are handed a document there; is that not the document which uh you handed to Mr. Verlander this morning or some, recently?

191 A. One like it, at least.

Q. In other words, it's identical with the one if it is not the one, correct?

A. As far as I know, it is.

Q. Yes, sir. Uh now that is an extract, as I stated, from the preparation of Merrill, Lynch, Pierce, Fenner and Smith, Incorporated to which we referred in the last few questions, is it not?

A. Yes, sir.

Q. Now, in returns, rates of return in an investment in common stocks listed on the New York Stock Exchange with re-investment of dividends percent per annum compounded annually for the one question to symbolize tax exempt. Now would you please refer to that and uh taking uh the period, let's see just one second, from 19 uhh 58 to 1963, what returns do you find?

A. Eight and seven tenths percent.

Q. Now the period uh, let's begin with uh 1958 uh taking the period uh ending in December 1958 and beginning, say 1946. What do you find?

A. Fifteen and two tenths percent.

Q. And taking the next year on the same basis, what do you find? 59.

A. Fifteen and three tenths percent.

Q. And the following year on the same basis, what 192 do you find?

A. Fourteen point 0.

Q. I see. And that year, which year was that in? Which year was that?

A. That was 1960.

Q. 60. Now 19 uh, you have, what, the next year, the one which would be 59, would it not? Which would be the next year that you have calculated?

A. 1961.

Q. 1961, what do you find?

A. Fourteen, nine.

Q. In 1962?

A. Twelve point eight.

Q. 1963?

A. Thirteen point two.

Q. Now, Mr. O'Farrell, those take into consideration, do they not, uh the various factors which uh are considered in arriv-

ing at the fair market value of stocks, including but not limited to the growth factor, the return factor and the earnings to price factor. Isn't that correct?

A. I would assume it would. I don't know.

Q. That is your assumption and belief, is it not?

A. I assume they do, yes.

Q. Yes sir. Now then, if those particular percentages 193 were applied in lieu of percentages which you have used on line M of attachment four to exhibit D-5 with one exception they would exceed twelve percent and would, therefore, reduce the valuation of the stock below that to which you testified a moment ago, would they not?

A. If the figures that you have taken here for 1946 were applied, they would change the figures and all of them down there, I believe.

Q. Now would you turn, please, to uh, that's right. Now in making your calculation, I believe you stated it was based upon the value of uh money and was calculated upon the assumptions that the one hundred dollars, or the par value, would be returned in the number of years which you have calculated upon the assumption you've stated. Isn't that correct?

A. Yes sir.

Q. Now when it comes to U.S. Government Bonds, or as you referred to here in attachment number three to your uh Exhibit D-5, they are definitely payable in full on a day certain and are guaranteed by or upon the pledge of the United States of America, are they not?

A. No answer.

Q. Sir?

194 A. That was in there, yes sir.

Q. Now you had mentioned that uh, one of the basic assumptions you had made was that first, after the A Stock had been revolved out that the New Orleans Bank for Cooperatives would then be under the control of the stockholders. Are you not familiar with the fact, as shown by the stipulation in this case, that when the Class A Stocks of the New Orleans Bank for Cooperatives is revolved out, that the New Orleans Bank for Cooperatives will still be governed by the same board of directors as to which the stockholders can elect or nominate only two out of seven, and that their actions

of this nature are all, and then will still under the statute all be subject to the approval of the Farm Credit Administration?

By Mr. WARREN:

I object, Your Honor, I don't think the stipulation says what Counsel says it does.

By Mr. SATTERFIELD:

May it please the Court, we have attached uh the copies of all matters, may I say the stipulation, and the Statute of the United States so provided and I think Counsel will not object on that ground.

Q. What is your answer. I amended it to say stipulation and statute—

195 By the COURT:

I couldn't pass on what your stipulation shows. If you gentlemen don't know, I certainly don't. Not now, I will know. I'll let him answer.

By Mr. SATTERFIELD:

Q. What's your answer, sir?

A. No answer.

Q. What is the answer?

A. I don't know that.

Q. You don't know that, therefore, your assumption has been, as you stated a while ago?

A. No answer.

Q. Thank you, sir. Now is it not a fact or do you, in your assumption, did you know that uh no one is permitted to vote a share of stock even for the two directors unless they have borrowed from the New Orleans Bank for Cooperatives uh within the preceding two years or then prior to the time of voting?

A. I believe that's correct.

Q. Then is it not a fact that if at, if the Farm Credit Administration and the Farm Credit Board of this district did not control the bank but if it were controlled by the C Stockholders, it would be to the interest of the patrons in 1971 who contributed margins through their borrowing of money, to pay themselves in cash rather than to pay cash on C Stock that somebody else obtained in 1958. Would that not be to their self-interest?

196 A. If someone else had obtained the stock in 1958 were voting didn't have the stock prior to the time to which they were voting, I would say it would be to their advantage to pay it to themselves at that particular time.

Q. Then if the patrons of the bank twenty point three years later as applied to the stock issued 1963 were different from the patrons of the bank and C Stock holders in 1963, then those patrons and stockholders twenty years later self-interest would be served by voting to pay the patronage refunds in cash instead of resolving the old C Stock, would it not?

A. No answer.

Q. Is that correct, sir?

A. If there were different parties, it would be to their advantage to pay to themselves rather than somebody else, I agree with that. It's a little involved for me to answer yes or no.

Q. Then, Mr. O'Farrell, that same answer and situation would apply, would it not, to stock as affecting stock issued in 1958 where the determination of whether the cash would be paid on C Stock for the then year or the 1958 year was made by stockholders thirty one point nine years after June the 30th, 1958.

By Mr. WARREN:

I object, Your Honor, Counsel has asked the witness about four or five different questions in one sentence, it seems to me.

By the COURT:

Well I think it's objectionable for another reason. I think you're just pumping arguments through the witness, and I'll sustain the objection. These are arguments, that's not questions.

By Mr. SATTERFIELD:

May it please the Court, the only reason, may I explain, for asking it was, the witness testified it would be to the selfish interest of the stockholders to revolve out the C Stock and as a matter of fact, now, he is not testifying under the circumstances which do exist, it would not be to their selfish interest. I believe he is contradicting his own testimony.

By the COURT:

All right.

By Mr. SATTERFIELD:

Q. Now in arriving at uh this, these dates that you have in line L on attachment four of Exhibit D-5, of course, one of these also appears on the first page of that exhibit in line L. In arriving at those years uh you assumed a continuation of the policies and businesses, business of the bank uhh as it existed during that year, did you not?



A. I assumed that they would be in a position to pay out as much in the retirement of the Class A, B, and C Stock in the future as they had paid out in the retirement of Class A Stock in the year being considered.

Q. You assumed that they would be in a position to do so and with reference to C as well as A Stock, you assumed that they would do so, did you not?

A. Yes sir.

Q. Now in that connection, at what point did you uh consider the fact, if you did consider it, that if the New Orleans Bank for Cooperatives determined it desired to increase its net worth its financial position and its ability to lend, then it would retain these earnings rather than revolving out the C Stock. Did you consider that at all?

A. I con, I considered that.

Q. You gave no weight to it though, did you, because your entire compilation was that it would be retired as soon  
199 as it was possible to do so under—

A. I made a very conservative estimate based on what was being done in that year projected into the future. The estimate was so conservative that it made allowance for a lot of lee-way for the operation of the bank.

Q. Would you show me where you made any lee-way whatsoever for any change in the policy of revolving out of C Stock? You testified awhile ago, you assumed that they would revolve out both the A and the C as soon as they were financially able. Did you make an incorrect statement a while ago?

A. You'll have to state that again. I didn't understand the question.

Q. A while ago, you—

A. You started in on one and you ended up with another one.

Q. I'll ask you again. Mr. O'Farrell, you testified a while ago that your assumption was that it would be revolved, both the A and C would be revolved upon the basis of the financial situation existing at the time under the policies and procedures then existing, did you not?

A. I took a very limited, made a very limited assumption as I mentioned a while ago. That they would continue to be able and they would continue to do what they were  
200 doing the year in which I was concerned.

Q. Then the answer to my question is yes, is it not?

By Mr. WARREN:

Your Honor, I think the answer speaks for itself—

By the WITNESS:

I don't know the answer. I think I answered your question.

By Mr. WARREN:

The answer speaks for itself.

By Mr. SATTERFIELD:

I believe so. I think he said yes.

By the COURT:

All right. We'll take a fifteen minute recess.

(Court recessed at 10:52 A.M. for 15 minutes.)

By the COURT:

All right, Mr. Satterfield. You may proceed.

By Mr. SATTERFIELD:

Just one moment, Judge. I've got to get this all organized here.

Q. Mr. uh O'Farrell, would you turn to Exhibit D-5 and point out the factor, if any, you utilized in considering the fluctuation in the value of a dollar as contained in your calculation?

A. There is no factors identified as factors in that calculation.

Q. Yes sir. Would you point out the factor, if any, relating to or compensating for the uncertainty affecting the date upon which payment might be made as related to the change in the interest over-ride which was a variable fixed in the statute of some ten percent to twenty five percent over-ride on interest paid. What is that factor, if anywhere?

A. The factors that are assumed in this are B—

Q. Do you mean that you assumed there was no change, there would be no change?

A. The factors that are assumed in here are B, the interest rate in E and the annual rate for discounting in M and as far as the calculations are concerned, they contain a, an amalgamation and an integration of the various factors that would be variables.

Q. May I restate the question and ask you to respond to my question? Would you point out to us on any page of Exhibit D-5 any factor utilized uhh compensating for the uncertainty existing in the statutory right to vary the interest over-ride from

ten percent to twenty five percent? In fact, there is none, is there?

A. It would be in B and uh M.

Q. How does it appear in B?

A. In a very conservative estimate—

202 Q. Yes sir—

A. That would allow for a considerable amount of discretion on the part of the bank and considerable variation in the economy from year to year.

Q. Would you point it out on attachment two, please sir? Uh which is a detail to Exhibit D, would you point at at which you have utilized such factor?

A. In which exhibit are you speaking of?

Q. You referred to number B on page one and stated it contained a factor compensating for the uncertainties arising from the right to vary from ten to twenty five percent in the interest over-ride. You stated there was such a factor appearing under Item B which is explained in attachment two. Would you please take your pencil and point out to the Court and to me that factor and exactly of which it consists?

A. Two hundred and twenty nine thousand eight hundred dollars on that sheet and twelve percent down below.

Q. Now the two hundred and twenty nine thousand and eight hundred dollars is the amount that was actually retired that year, I mean the amount that was actually uh entered that year by the bank, is it not, for Class C Stock?

A. Is the amount of Class A Stock retired that year.

203 Q. Is this, there are two hundred and twenty nine dollars, two hundred twenty nine thousand eight hundred dollars. Exactly what is that figure? What does it represent?

A. That was taken from the reports of the bank indicating the amount of Class A Stock retired during the year ending June the 30th, 1958.

Q. That was based on a then interest over-ride of fifteen percent, was it not?

A. It was based on a lot of factors. One of the factors involved was the over-ride.

Q. And that was fifteen percent, was it not, Mr. O'Farrell?

A. I understand it was.

Q. Yes sir. Then, as a matter of fact, there is nowhere in any of these compilations in which you have entered any factor

compensating for any variation from fifteen percent for the reason that each one of these columns on attachment two and all related matters as to that item are based solely upon fifteen percent? Would you answer yes or no and then explain?

By Mr. WARREN:

I object, Your Honor, the question's argumentive.

By the COURT:

I'll let him answer if he can.

204

By the WITNESS:

I have made allowance for it in the two hundred and twenty nine thousand and eight hundred dollars and in the twelve percent.

By Mr. SATTERFIELD:

Q. On fifteen percent in these dollars, would you answer my question, please sir? In each one of these items that appear under the column Class A of attachment two, Class A Stock retired that was based on an exact fifteen percent over-ride on interest utilized by the bank that year, was it not?

A. For that particular year, yes sir.

Q. There was nothing included therein which would compensate for any variation in the future as to the remainder of the thirty one point nine years involved in the 1938 stock was it?

A. This is an estimate for the remaining years. For the Year, 1958, it was an actuality. As an estimate, it includes a lot of factors. As an actuality, it includes uh may be the factors that you have designated.

Q. Which is the fifteen percent, yes sir.

A. And as an actuality in the year in which it's reported.

Q. Now after these questions, Mr. O'Farrell, don't you  
205 feel free to say that in a number of these calculations have you entered any factor which would compensate for a change in the interest over-ride from fifteen percent to ten percent?

A. I have, in the two hundred and twenty nine thousand eight hundred and in the twelve percent.

Q. In the two hundred twenty nine thousand eight hundred, that was based upon fifteen percent you stated a while ago—

A. It is my estimate to retire annually on an average basis of the Class A Stock and the other stock uh after Class A Stock is retired.

Q. You mean to tell this Court that at any point in this uh compilation or calculation you have utilized any figure in re-

lation to the funds available on the interest over-ride other than fifteen percent?

A. There are—

Q. Would you answer my question yes or no and then explain, please sir?

A. Will you repeat the question, please?

Q. The question is do you mean to tell the Court that at any point in this entire compilation or calculation have you utilized any interest over-ride figure other than the fifteen percent?

A. I have allowed—

206 Q. Would you answer yes or no?

A. I have allowed for the possibility that the interest over-ride would be changed.

Q. Would you point out; now you said that is included in the two hundred twenty nine thousand eight hundred dollars. How was it included?

A. And the twelve percent.

Q. How was it included in the two hundred twenty nine thousand eight hundred dollars?

A. After reviewing the affecting factors, I concluded, on a conservative basis, that it would be reasonable to forecast the retirement of the stock at the rate of two hundred twenty nine thousand and eight hundred dollars a year which was no higher than they had proved that was reasonable to retire in the Year, 1958.

Q. Which was exactly based on fifteen percent over-ride, was it not?

A. Had nothing to do with the fifteen percent over-ride as far as the future was concerned as an absolute. It made allowance for any kind of an over-ride between ten and twenty five percent, the statutory limit.

Q. But the figure, two hundred twenty nine thousand eight hundred was based on fifteen percent only, was it not?

A. In 1958 it was, not for the future.

207 Q. In the future, do you mean to say that when you have a calculation here of two hundred and forty seven thousand in 1959 that was based on anything other than the fifteen percent over-ride on this attachment two?

A. I concluded back in 59 that based on what was being done that year, you could reasonably conclude that they could do that in the future also.



Q. And that was fifteen percent, wasn't it?

A. In 59 it was, not necessarily in the future.

Q. It was in every year you utilized, was it not? Fifteen percent?

A. It was in the year in which we are speaking of, not for the subsequent.

Q. And for the future years, would you point out to me the exact spot in which you have changed from fifteen to ten on any other percentage on over-ride?

A. There is no exact spot where I changed it.

Q. Now you stated in your direct testimony that the twelve percent was based upon your own individual estimate of the risk involved, you referred to risks such as uh the instruments secured by second mortgages, E T C and that it uh, that was chosen for that reason. Do you change your testimony now and say it was chosen because of the possibility of a change  
208 in interest over-ride?

A. The interest over-ride is one of the risks.

Q. I see. Then in that connection, there is also a risk, is there not, the spread which the bank would be able to uh obtain between the money borrowed and money loaned. Is that not also a risk varying from year to year?

A. It's an uncertainty. I don't know whether you would say a risk and uncertainty are identical but there is an uncertainty which all uncertainty adds to risk.

Q. Thank you, sir. Now that also, well you stated that the value of a dollar is one. Now with reference to this same question of the risk or uncertainties uh there remains the one that the, talked about a while ago that the bank might decide to pay off C Stock in cash if and when the stockholders got control of it, uh does it not? As you just testified a few minutes ago.

A. I don't understand your reference to the bank paying off C Stockholders in cash.

Q. Well, we've covered that. I won't go back over it. Now there is also an additional factor, is there not, I believe you heard some testimony yesterday, additional factor, is there not, that when the A Stock is paid off, then the bank be-  
209 comes an organization somewhat in the nature of a non-exempt cooperative and is subject to payment of taxes of all phases of the business uhh that fall within the

taxable income of a non-exempt cooperative. Where have you in this calculation and formula entered the factor, and please put your finger on it and describe it, uhh allowing for the additional taxation which will result at that time?

A. In the tabulation it would be in the two hundred and twenty nine thousand eight hundred dollars and the twelve percent.

Q. I see in the two hundred and twenty nine thousand and, and the twelve percent. Now where have you included the factor which takes in account the risk of the, the question of the board determining to increase its net worth and ability to serve and retaining cash funds instead of revolving out C Stock?

A. It's in those two factors also, the two hundred and twenty nine thousand eight hundred and the twelve percent.

Q. I see, sir. Thank you, sir. Where in these calculations and formula uh is the, is included the risk or uncertainty or rather not uncertainty either, but the certainty that when the A Stock is paid out that it will be, this cooperative will be, this  
210 bank will be required to pay twenty percent of its patronage refunds in case under the Act of 1962?

A. That act wasn't passed until the latter part of this period but the chance of such an act being passed is one of your uncertainties and the bank in its setting of interest rate has the sufficient authority to take care of these earnings from year to year within reasonable limits.

Q. As a matter of fact, that act was passed in the Fall of 1962, the year, two of the years, I mean the year involved for each of these taxpayers the year ending June 30th, 1963, therefore, when you analyze and calculate or fixed your opinion of the value of stock as of June 30th, 1963, it would necessarily include the knowledge of the existence of this act, would it not?

A. Yes sir.

Q. Has that, uh where in this compilation does that particular uhh formerly risk now certainty appear?

A. For the Year, 1963—

Q. Right.

A. It would be in the three hundred and ninety thousand dollars on line B, and the six percent on line M.

Q. Now as a matter of fact, the three hundred and ninety thousand dollars was the exact amount which was

211 thus disposed of without the application of the 1962 Act, was it not, which does not become applicable until the A Stock was paid out?

A. That was correct.

Q. Yes, sir. Then how is it in that figure when you are taking the exact amount paid out when the act was not applicable, and couldn't be applicable?

A. The years after 1963 are being considered and the basis of the estimate is that they will be able to continue the practices, reasonably continue the practices that they have established and are illustrated by what they did in 1963.

Q. Now, Mr. O'Farrell, when you turn to your attachment number four to Exhibit D-5, to calculation for the 6th of uh June, I mean uh June the 30th, 1963, you uh project the possibility of same in the period of twenty point three years. Under your calculation, the necessity of paying out twenty percent of the patronage refunds in case would arise prior to June the 30th, uh 1983, twenty years later, which is prior to the date you assumed this may be revolved, would it not?

A. June the 30th, 1883?

212 Q. That's 1963 plus twenty point seven years, I believe it is, the exact time. Twenty point three years. Isn't that 1983?

A. Right.

Q. And then in having knowledge of that and knowing it would go into effect if on the basis of these calculations you have used uh will you point out the factor, percentage, the item where you have taken that into consideration?

A. Three hundred and ninety thousand on line B and the six percent on Line M include these various factors, including that factor.

Q. You don't mean to tell the Court the three hundred and ninety thousand dollars is calculated on the basis of twenty percent case uh dividends was it? On patronage refunds?

A. It was calculated, as far as this development is concerned, on the basis of the bank being able to maintain what had been established and was an actual fact at that time.

Q. Now, Mr. O'Farrell, you have testified to some six various factors which were contained in and computed for by the use of the exact number of dollars each year in uh your Item B without changes, and except this last one on the twenty

percent, by the use of twelve percent as the rate of discount for the year ending June the 30th, 1958; during this  
213 entire period, from June the 30th, 1958 to June 30th,

1963, every one of these risks or uncertain factors compensated for by the twelve percent was in existence when you used ten, nine, eight, seven or six percent, was it not? With the sole exception of this twenty percent patronage refund?

A. The factors that you have illustrated by your questions preceding this, for instance the tax—

Q. And all these other—

A. All—

Q. Sir?

A. They were in effect—

Q. I can't hear you, sir, I'm sorry.

A. All of these risks were in the future during all of this period.

Q. But they all were in effect in each of these years other than the twenty percent case refund, were they not?

A. Yes, they were all uh, all risks in each, in each of these periods.

Q. And that, uh they were compensated for the first year in the twelve percent, then you reduced that to six percent; even though all of the risk still existed and there had been added a new risk, isn't that true?

A. They, among many other risks, were apparent during all of this period.  
214

Q. Thank you.

Now, would you give the witness uh the uh exhibit attachments to the stipulation which have been introduced, the, and it will be Exhibit number 17, I believe, which will be the manual of the bank for cooperatives.

By the COURT:

That's a number in your stipulation rather than an exhibit.

By Mr. SATTERFIELD:

I'm sorry, yes, that's true.

By the COURT:

What is the exhibit number here?

By the CLERK:

P-2.

By the COURT:

P-2?

By the CLERK:

Yes sir.

By the COURT:

All right.

By Mr. SATTERFIELD:

Q. That would be Exhibit P-2, the attachment thereto being Exhibit uh 17 to Exhibit P-2. Would you turn to paragraph numbered one sixty seven of the manual, please  
215 sir, or numbered as Section one sixty seven. That is headed, Distribution of Allocated Surplus, is it not?

A. Distribution of Allocated Surplus.

Q. Now in your, in connection with your inclusion on the basis that you have referred fully today of allocated surplus with Class C Stock uhh is it not a fact that, as is set forth in this manner that there is a very material difference in the time within which allocated surplus may be expected to be revolved out, the value thereof and a great difference between it and Class C Stock by the fact that it is only when the such account of a bank for cooperatives at the end of the fiscal year exceeds twenty five percent of the sum of all of its outstanding capital stock and the surplus exceeds equally or exceeds ten percent of the net worth or such larger percentages as may be determined by the Board of Directors with approval of the Farm Credit, that the Board of Directors of the Bank may order the distribution of the allocated surplus as provided by the law. Is that correct, sir?

A. Yes, if that's what it says, yes.

Q. Would you read it and see if that's what it says,  
216 and answer yes or no?

By Mr. WARREN:

If your Honor Please, the uh section of the manual speaks for itself.

By the COURT:

I think so. Sustained.

By Mr. SATTERFIELD:

Q. Now, Mr. O'Farrell, I have one other phase of questioning. Uh You are familiar, are you not, with Revenue Ruling uh 59-60, of the Internal Revenue Service, Treasury Department?

A. Generally, yes sir.



Q. Uh that sets forth the procedures for the valuation to be utilized applicable to uh corporate stocks uh therein described, does it not?

A. Under certain conditions. I think it was set up originally for taxes, uh for stocks in estates but it's obtain rather general application.

Q. It further provides, after referring to estates and so forth, the matters discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or such scarcity they do not reflect the fair market value; then that would apply to this stock, would it not, Mr.

O'Farrell?

217 A. It could be applied to it.

Q. Reasonably so, you think in your opinion that reasonably so it could be applied to it?

A. It, among other things could be applied.

Q. Well now let me ask you, please sir, in that particular revenue ruling, there is set forth the basis of valuation of stocks of the nature which I have described and of the nature now before you, and is it not a fact, let me ask you whether or not in uh arriving at the valuation here, you have utilized all of the factors therein included?

A. The ones that are relevant, I believe I have.

Q. Beg pardon?

A. The one's that are relevant, I believe I have utilized.

Q. I see. Well now reference, one of the factors under section four provides that uh you should take into consideration the economic outlook in general and the conditions and outlook of specific industry in particular. I believe you stated that you have generally but have not considered the value of a dollar as applied to these figures. Is that correct, sir?

A. I don't remember that I said that I hadn't considered it; uh the value of a dollar but I took into consideration economic outlook and industrial outlook for the industry.

218 Q. But you did state that you did not include any factor varying the compilations in accordance with the expected valuation of the dollar, did you not?

A. I said the various factors were included in the uh different items that I mentioned for each of the years.

Q. In one case, twelve percent and another case, six percent?

A. Yes sir.

Q. Yes sir, I see. Now uh one of the items under section 401E is a dividend paying capacity; there is no dividend paying capacity in this instance, is there?

A. There might be some dividend paying capacity but it had no record of dividends and no dividends would be paid on the C Stock.

Q. Then insofar as C Stock was concerned, there was no dividend paying capacity was there? Under the law?

A. Not at that time, no.

Q. And, or at this time as far as you know. Right?

A. Far as I know.

Q. Yes sir. Now uh when it comes to the question of 219 the book value of the stock and financial condition of the company, the, the uh stipulation statute and the testimony here shows that the C Stock regardless of when paid—

By Mr. WARREN:

Your Honor, I object to recitation of what the evidence shows, what the stipulation shows. If Counsel wants to ask the witness a question, I have no objection to that but recitation of all that's gone on before getting down to asking the witness a question seems to me to be improper and to over, uh make the trial over-long and is rather useless as I see it. I object to it.

By the COURT:

I don't know what the preface is. He's prefacing a question, I assume. I'll wait and see what his question is and see if it's objectionable.

By Mr. SATTERFIELD:

Q. Under the, the statute, the stipulation in evidence here it has been shown without dispute that the C Stock, if and when retired, would be retired at par period, therefore, when it comes to the matter of the book value of the stock, or the possible growth of the increase of book value, upon your assumption that the Class C Stock will be retired, no weight was given in your calculations to an increase in the book 220 value of the stock, was it?

A. No answer.

Q. What is your answer?

A. Not that I specifically remember that I considered any addition to book value.

Q. So that insofar as this stock is concerned, that item of valuation was not applied by you, right?

A. If considered, it's not given any particular weight.

Q. Yes. Of course, the sales of the stock, you have already stated, were not considered by you, you knew of none, is that correct? Another item that is basis of valuation?

A. I didn't understand you?

Q. That you did not consider the sales of the stock or the size of the block of the stock to be valued?

A. I didn't have, I have told you before I could find no record of sales that were comparable and the block of the stock, I didn't think of the significance as far as determining its value.

Q. One of the items of valuation required to be considered under the, this regulation is the market value of stock of corporations engaged in the same or similar line of business having their stock actively traded in a free open market either an exchange or over the counter. That factor was not utilized by you in any way, was it?

A. It wasn't considered relevant.

Q. Then uh as a matter of fact, these elements which are required by this uh ruling to the extent stated have not been applied by you in this case, have they?

By Mr. WARREN:

I object, Your Honor. I don't think that the ruling requires any specific factor to be taken into account. These are the factors, I believe, the regulations requires may be taken into account.

By the COURT:

I'll let him answer. Overruled.

By the WITNESS:

The relevant factors were considered but many, uh many factors after it's been considered, have not been considered relevant as far as value was concerned.

By Mr. SATTERFIELD:

Q. Now as a matter of fact you have stated that you are familiar with this uh ruling.

Do we have a copy of this? Could you hand it to the witness?

By the WITNESS:

Thank you sir.

222 Q. It is a fact, Mr. O'Farrell, is it not, that under this ruling applicable to the valuation of the stock there-in described as heretofore testified by you that there is no reference whatever to a consideration to the value of money payable at some certain or uncertain time in the future, is there?

A. There is in those factors that I've mentioned before, the B and the M.

Q. You say that—

A. There is.

Q. I couldn't hear the first part.

A. I said there is in the factors that I have mentioned before which are identified as in the lines B and M of the attachments that we have discussed.

By the COURT:

That's attachment four. Is that what you're saying?

By the WITNESS:

Yes sir, attachment number four.

By Mr. SATTERFIELD:

Q. It will be necessary, Mr. O'Farrell, to clarify your various references to attachment, uh to number B which is attachment two. In this, didn't you testify this morning in response to a question of your own Counsel that the items therein entered were simply taken from the annual statements of New Orleans Bank for Cooperatives and the Farm Credit Administration for each of the years involved without alteration or change by you?

A. Yes sir.

Q. There has been included therein no change relative to any other factor whatsoever, a simple transcription of figures, is that right?

A. No changes that I know of.

Q. Yes, sir, thank you. But as to the item you referred to as uh item number, number N, M uh that is the item which uh is the varying from twelve percent you first adopted to the six percent you later adopted, isn't it?

A. Yes sir. Yes sir.

Q. And as to the question I just asked you as where this actually appeared, then it appears in each of, each one of those percentages all the way through, does it not?

A. I don't know that it appears in each one but it appears in the combination of those two throughout the six years of appraisal.

Q. I mean does it appear in each one of the percentage factors on Line M?

A. It appears in each one of the percentage factors used in relation to the figures on line B.

224 Q. Now, Mr. O'Farrell, do you testify that in your opinion an investor in 1963 would have been willing, willing buyer, willing seller would have been willing to pay thirty eight dollars and sixty six cents for a stock with a par value of one hundred dollars, no possibility of appreciation through the growth of the corporation, with no interest payable, the earliest date at which it might be payable being twenty point three years hence subject to the uncertainties which you have mentioned as to an extension of that date. Do you testify in your opinion that you, individually, or any investor would pay that sum of money for that security at that time?

A. I estimate that's the fair market value at that particular time.

Q. You didn't answer my question.

A. Under the definition of fair market value, you have a willing buyer and a willing seller. I don't know that the definition says you've got to have a sale.

Q. The answer to my question then is no, that you wouldn't pay it?

By Mr. WARREN:

I object, Your Honor, the witness has answered the question that Counsel has asked.

225 By the COURT:

Well, he's been a little bit evasive about it. I'll let him—

By the WITNESS:

A willing buyer would have bought it under the definition of fair market value.

By Mr. SATTERFIELD:

Q. Would you have paid that much for—

By Mr. WARREN:

Objection, Your Honor—

(All talking, including witness).



By the COURT:

Gentlemen, there are too many people talking at one time. Let him finish his question. If you don't like it, object to it and I'll rule on it. Ask your question.

By Mr. SATTERFIELD:

Q. What was your answer?

By The COURT REPORTER:

I didn't get all of your question.

By Mr. SATTERFIELD:

Q. I asked the question as to whether or not you would have been willing to purchase this stock at that price. I believe your answer, Mr. O'Farrell was that you were not a willing buyer, is that right?

226 A. I am not the willing buyer. I am the appraiser.

By the COURT:

I'm not discouraging objections. I am discouraging interruptions of questions.

By Mr. SATTERFIELD:

Q. Now where a common, have you, you have testified you consider this in the nature of common stock of a restricted nature, do you not?

A. I don't know what you mean by restricted.

Q. Subject to the restrictions as to whom it may be sold, as to when it may be, all the various matters that we've discussed.

A. It is restricted in the sense that there were not many potential buyers.

Q. Do you consider this to be in the nature of capital stock or common stock, to be a capital stock or a common stock?

A. Yes sir.

Q. I see. Now uhh—

By the COURT:

What are the characteristics of common stock that's in here in the Class C Stock?

By the WITNESS:

227 It's an equity interest which means that it doesn't have a, a lien on any of the property in itself like a debt interest a bond would, and it represents the control of the enterprise, the ownership control of the enterprise; and it represents the control not only through the future of the company but through the uh present operations. There isn't very much else except that it reserve, it has a right to participate in

earnings under the conditions that are outlined by the by-laws of the company but that, in this case, is a very restricted right. But mainly, it's control which is the primary characteristic of a common stock.

By the COURT:

That's right, but then you are saying then that these C Stock-holders own this business?

By the WITNESS:

Yes, I would say they own the business.

By Mr. SATTERFIELD:

Q. Your testimony heretofore has been, included that basis, has it not? —

A. Yes sir. —

Q. That you just told the Judge?

A. Yes sir.

Q. I see, sir.

Just a moment. Just one second. May it please the Court, we have no further questions.

## OPINION

United States District Court, Southern District of  
Mississippi, Western Division

Civil Action Number 1213

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Civil Action Number 1214

COASTAL CHEMICAL CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

These consolidated suits seek a recovery of income taxes back-assessed and paid for the fiscal years (ending June 30) 1961, 1962, and 1963, and for the additional years 1958, 1959,

and 1960 as to Coastal Chemical Corporation. The plaintiffs are Mississippi corporations created as cooperative associations as defined in the "Agricultural Marketing Act" as amended.<sup>1</sup> The New Orleans Bank for Cooperatives had Class A stock, Class B stock (neither of which is involved in any way in this suit), and Class C stock (owned by these cooperatives) which gives rise to these suits by reason of the divergence of opinion as to the fair market value of such Class C stock during the tax years stated.

The qualities and attributes and rights accorded the holder of such Class C stock is regulated by statute<sup>2</sup> and is committed to the ultimate control of the New Orleans Bank for Cooperatives.<sup>3</sup> The plaintiffs were not eligible to borrow funds from the cooperative bank without owning a qualifying share of such Class C stock. The bank required these cooperatives to purchase from it 15% of the amount of each interest payment made quarterly on its loan in exchange for shares of said stock credit at one hundred dollars per share par value. These shares of stock were carried on the plaintiffs' books at one dollar per share and were actually considered and treated as having no value during the period in suit. These forced purchases of such stock were authorized by 12 U.S.C.A. Sec. 1134d(a)(3). Periodically, the bank issued these plaintiffs certificates of credit for additional shares of Class C stock at the end of each year as "patronage refunds," as authorized by 12 U.S.C.A. Sec. 1134l(b), effec-

<sup>1</sup> 12 U.S.C.A. Sec. 1141 et seq.

<sup>2</sup> It is interesting, if not somewhat persuasive, to notice that tax decision No. 6428 (December 2, 1959) following *Long Poultry Farm, Inc. v. Commissioner of Internal Revenue* (4CA) 240 F. 2d 726 and *Commissioner of Internal Revenue v. B. A. Carpenter*, (5CA) 219 F. 2d 635 in dealing with a cognate question as to market value of a document payable only in the discretion of a cooperative association "or which is otherwise subject to conditions beyond the control of the patron, shall be considered not to have any fair market values at the time of its receipt by the patron, unless it is clearly established to the contrary." The existence of market value or even actual value of this Class C stock as stock is not clearly established by the facts and circumstances in this case. The proof here is to the contrary.

<sup>3</sup> The Class C stock can be retired at par without interest, but not until all government Class A stock has been retired, and all Class B stock has been retired which was issued during or prior to the year in which such Class C stock was issued and until all prior issued Class C stock has been retired. This may be done in the discretion of the Board of Directors of the bank and subject to the approval of the Farm Credit Administration.

tually as refunds of over-charges in the processing of such loans.<sup>4</sup> Significantly, no certificates of Class C stock were ever issued by the bank, but the plaintiffs were simply notified of credit on the bank books therefor. None of this stock has ever been sold by any cooperative. Only a cooperative can hold such stock. No provision is made for its redemption or retirement, except by statute as to order of retirement with the Class A and Class B stock. The United States owns all of the Class A stock, and the bank has absolute control over such stock and no provision has been made, or can be made for any retirement of Class C stock until all Class A stock and outstanding Class B stock is retired. Regardless of the number of shares of Class C stock owned, the plaintiffs have only one vote as owner of Class C stock. If a borrower's account with the bank is inactive for as long as two years, the right to vote such stock is abated.

The Class C stock has no growth value and can be retired at par without interest. No dividend is paid on such stock. It may be readily seen that this Class C stock as a practical matter does not enjoy the usual attributes of shares of stock, but are mere bookkeeping entries or devices set up by the bank for the processing of loans to cooperatives. While the plaintiffs received certificates of credit on the books of the bank for Class C stock, some by purchase and other credits as statutory "patronage refunds," there is actually no significant difference in such Class C stock acquired in such different ways. It is a universal rule of law, applicable to such Class C stock credits, that any charge by whatever name called, or device employed as an exaction for or a condition precedent to a loan of money is interest.<sup>5</sup> These plaintiffs did not voluntarily invest any money in any Class C stock of the bank, but did contribute funds to

<sup>4</sup> The "patronage refund" is not income but simply a refund of an over-charge of interest. *New York Life Insurance Co. v. Anderson, Internal Revenue Collector*, (2CCA) 263 Fed. 527, cert. denied 41 S.Ct. 536 holds: "Excess premiums, collected by a mutual insurance company and returned to stockholders or applied to their credit, do not constitute income of the company within corporate excise tax act."

<sup>5</sup> The act of Congress (12 U.S.C.A. Sec. 1141f) limits the interest rate on such loans to 6%. Regardless of how such a charge for the use of money is characterized, the universal rule is that interest is: "The amount which one has contracted to pay for the use of borrowed money. *Old Colony R. Co. v. Commissioner of Internal Revenue*, 284 U.S. 552, 52 S. Ct. 211." or "compensation for the use or forbearance of money." *Deputy v. Du Pont*, 308 U.S. 488, 60 S. Ct. 363.

the bank which it carried on its books as credit for said stock solely as an exaction by the bank without which such loans would not have been made by the bank. These credits were interest items incurred by these plaintiffs and not capital investments. The credits for Class C stock purchased were clearly disbursements for interest as a matter of law and the credits as "patronage refunds" were not income but were refunds of overcharge as interest. These plaintiffs simply owned letter credits showing as credits on the books of the bank, that they (plaintiffs) owned so many shares of Class C stock, without ever having actual possession at any time of any share or certificate of such Class C stock. Clearly, such Class C stock owned by the plaintiffs could not possibly have any appreciable market value under such circumstances and conditions, coupled with the statutory restrictions on said class of stock.

These plaintiffs made timely and proper demand for refund and made known the basis therefor, and this Court has full jurisdiction to that which is herein done.

In sum, this Class C stock acquired by the taxpayers during the years in suit did not represent voluntary investments. The plaintiffs were forced to purchase stock at each quarter interest paying date equal to 15% of each interest payment. This obligation had to be satisfied by money, and could not be satisfied by Class C stock already owned. The Class C stock whether acquired by purchase or "patronage refund" was the same, and represented interest refunded or money paid for the use of money lent by the bank. This stock was not worthless, but had merely a nominal value because of the unusual attributes stated. The value of such stock arrived at by applying the prevailing discount rate on a hundred dollar par value certificate, not bearing interest and not producing dividends, to be revolved or retired at some indeterminate period of time in the future (not less than twenty years or before 1989) would not have any market values, but would nevertheless have only a nominal value of not more than one dollar per share. The ninety-nine dollars remaining in the par value of this Class C stock owned by these plaintiffs was deductible by them as interest during the tax years involved. The plaintiffs are accordingly entitled to a judgment against the defendant for such amounts indicated, with statutory interest. No cost will be assessed. A copy of this opinion shall be filed in each case sep-



arately as embracing the finding of facts and conclusions of law therein.

In The United States District Court for the Southern Judicial  
District of Mississippi—Western Division

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF

v.

7

THE UNITED STATES OF AMERICA, DEFENDANT

Civil Action No. 1213

JUDGMENT

(Filed Mar. 24, 1969)

This Cause coming on to be heard in the Vicksburg Division during a regular term of this Court by the consent of the plaintiff and the defendant given in open Court, and the Court having considered the pleadings, the Stipulation of Facts, and the briefs of counsel for the plaintiff and for the defendant, and the Court being fully advised in the premises, having entered its opinion on February 14, 1969, finding that the plaintiff is entitled to recover the amount hereinafter set forth.

It is, therefore, ordered, adjudged and decreed that the plaintiff, Mississippi Chemical Corporation, a corporation, do and have recovery of and from the defendant, The United States of America, the principal sum of \$85,298.51, together with interest thereon at the rate of six per cent per annum as follows: From April 4, 1966, upon the sum of \$33,859.37, from June 29, 1967, upon the sum of \$20,006.11, and from July 21, 1967, upon the sum of \$31,433.03, all interest being payable until this Judgment is paid.

For which let execution and other proper process of this Court issue.

ORDERED, ADJUDGED AND DECREED this 28th day of February, A.D., 1969.

(s) HAROLD COX,  
United States District Judge.

United States District Court, Southern District of  
Mississippi—Western Division

COASTAL CHEMICAL CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Civil Action No. 1214

JUDGMENT

(Filed Mar. 24, 1969)

This action came on for trial before the Court and the issues having been duly tried and a decision having been duly rendered, it is ordered and adjudged:

- (1) That the plaintiff, Coastal Chemical Corporation, recover of the defendant, United States of America, the sum of \$265,044.35, plus interest thereon as provided by law;
- (2) That no costs be assessed herein.

ORDERED AND ADJUDGED, this March 22, A.D., 1969.

(s) HAROLD COX,  
*United States District Judge.*

OPINION

In the United States Court of Appeals for the Fifth Circuit

No. 28271

MISSISSIPPI CHEMICAL CORPORATION, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

COASTAL CHEMICAL CORPORATION, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

*Appeals from the United States District Court for the  
Southern District of Mississippi*

(September 14, 1970)

Before GEWIN, GODBOLD and CLARK, Circuit Judges<sup>2</sup>

GEWIN, Circuit Judge: The government appeals from separate judgments entered for Mississippi Chemical Corporation and Coastal Chemical Corporation (hereinafter, taxpayers) in their suits for refund of federal taxes. Taxpayers based their claims for refund on the contention that \$99 of each \$100 expended for the purchase of certain Class C stock in the New Orleans Bank for Cooperatives constituted deductible expenses in the year of purchase. The government contended that these amounts were the non-deductible costs of acquiring capital assets. The district court concluded that the payments were deductible as interest expenses, and we affirm.

Taxpayers are Mississippi corporations with their principal place of business in Yazoo City, Mississippi. During the tax years in question they were "cooperative associations" as defined in the Agricultural Marketing Act.<sup>1</sup> Taxpayers are stockholders in, and borrowers from, the New Orleans Bank for Cooperatives (hereinafter, the Bank). The Bank is part of a banking system created by the federal government<sup>2</sup> during the depression to provide low cost loans to farmer's marketing, purchasing, and service cooperatives. It is one of the twelve regional banks in the system and serves Louisiana, Mississippi, and Alabama.

The governing legislation<sup>3</sup> provides for three classes of stock in a regional bank. Class A stock represents the original capital

<sup>1</sup> 12 U.S.C. § 1141(j).

<sup>2</sup> 12 U.S.C. § 1134.

<sup>3</sup> 12 U.S.C. § 1134(d).

contributed by the United States. These shares are non-voting and pay no dividend. The legislation contains a scheme of retirement for Class A shares which is dependent on the amount of Class C stock purchased and on the net profits of the regional bank. Class B stock may be issued to any person. It is non-voting but may bear a dividend not to exceed four percent per annum. Class C stock may only be issued to banks for cooperatives and to farmers' cooperative associations. It pays no dividend. Each holder of Class C stock is entitled to one vote, though a cooperative has only the single vote regardless of the number of Class C shares held.

Farmers cooperatives, like taxpayers, acquire Class C shares in three ways: (1) Each cooperative must purchase a qualifying share of Class C stock to be eligible to borrow from the Bank. (2) A borrower cooperative is required to make quarterly investments in Class C stock; these purchases are referred to as "interest override" payments. The amount required to be invested is not less than ~~ten~~ nor more than twenty-five percent of the interest payable by the borrower for that quarter, to be determined by the Bank's director. (3) Class C stock is also received by farmer's cooperatives as a distribution of the Bank's net profits during a fiscal year. These distributions, called "patronage refund", are computed in amount "in the proportion that the amount of interest earned on the loans of each borrower bears to the total interest earned on the loans of all borrowers during the fiscal year."<sup>5</sup>

Mississippi Chemical Corporation acquired its qualifying share of Class C stock in 1956; Coastal Chemical Corporation purchased its share in 1957. Each carried its initial share on its books at the \$100 cost, and neither sought a deduction for any part of this expense. These qualifying shares were not involved in the suit below.

Mississippi Chemical's suit concerned the fiscal years ending 30 June 1961, 1962, and 1963. As a result of its borrowings during those years it was required to make "interest override" purchases of 189, 169, and 193 shares of Class C stock respectively. The purchase price of each share of stock was \$100. In its tax returns for each year, Mississippi Chemical reported \$1

<sup>4</sup> The rate for the New Orleans Bank during the periods in question was 15%.

<sup>5</sup> 12 U.S.C. § 1134(1)(b).

per share as the cost of acquiring a capital asset and claimed a deduction in the amount of \$99 a share as an interest expense. In the same fiscal years, Mississippi Chemical received "patronage refunds" of 287, 275, and 251 shares of Class C stock respectively. It reported \$1 per share of the "patronage refund" as a reduction of interest expense and investments, but it made no report of the remaining \$99 of par value of each share.

Coastal Chemical's suit involved a longer period of time including the fiscal years ending 30 June 1958 through 1963. In these years Coastal Chemical purchased 118, 339, 473, 417, 351, and 421 shares of Class C stock respectively pursuant to the "interest over-ride" requirements. During the same years, it received 143, 474, 516, 605, 523, and 630 shares of Class C stock as "patronage refunds." In its tax returns for these periods, Coastal Chemical treated the shares purchased and those received as "patronage dividends" in the same manner as Mississippi Chemical.

The Commissioner disallowed the interest deduction claimed by each taxpayer and asserted deficiencies. Taxpayers paid the deficiencies and filed claims for refund which were disallowed. Taxpayers then instituted their actions which were consolidated for trial in the district court. The court below upheld the taxpayer's contention that \$99 of each \$100 expended for the purchase of a share of Class C stock was deductible as an interest expense. In the district court the government also contended that taxpayers should have reported the Class C stock received as patronage refunds as income. The court did not sustain this position and it has been abandoned by the government.<sup>6</sup> As a result the present appeal is concerned solely

<sup>6</sup> In a footnote to its brief the government states:

"The Government also contended in the lower court, that the taxpayers should have reported the patronage dividends (refunds) of shares of Class C stock during the taxable periods in issue as income. The lower court refused to sustain that contention. The Government has not appealed from that part of the judgment."

In this connection the following argument is advanced by amicus curiae:

"By failing to appeal from the decision below that Class 'C' stock received as patronage refunds must be included in plaintiffs' income only to the extent of \$1 per share, the government in effect concedes that the fair market value of such stock is no more than \$1 per share. Clearly the



with the tax treatment of the Class C stock purchased under the "interest override" requirements of 12 U.S.C. § 1134(1)(3).

# I

Central to the district court's decision was its finding that the Class C stock,<sup>8</sup> while not worthless, was without any appreciable market value and had at most a nominal value. This conclusion is attributable to the peculiar nature of these shares. Taxpayers could only sell or transfer Class C stock to another qualified farmers' cooperative with the authorization of the Bank's Board of Directors and the approval of the Farm Credit Administration. No share of the Bank's Class C stock has ever been sold by a cooperative,<sup>9</sup> so there is obviously no market in this stock that would aid evaluation.

Additional characteristics of the stock severely limit its value in the hands of the taxpayers. It pays no dividend and has no growth potential. After the purchase of their initial, qualifying shares, taxpayers gained no voting rights by the purchase of additional Class C stock. The Bank has a first lien on all Class C

same standard must apply in assessing the value of the identical stock which is purchased pursuant to the requirements of a loan agreement."

*See Commissioner v. B. A. Carpenter*, 219 F. 2d 635 (5th Cir. 1955); *Long Poultry Farms v. Commissioner*, 249 F. 2d 726 (4th Cir. 1957); Treas. Reg. § 1.61-5(b) (1) (iv) 1959).

The same question has been involved in two recent cases. In *Penn Yan Agway Cooperative, Inc. v. United States*, 417 F. 2d 1372 (Cl. Ct. 1969), the Court of Claims held that amounts paid for Class C shares of the Springfield Bank for Cooperatives under the "interest override" requirements were currently deductible as interest. In *M.F.A. Central Cooperative v. Bookwalter*, 286 F. Supp. 956 (E.D. Mo. 1968), the district court allowed current deduction of the cost of Class C shares in the St. Louis Bank for Cooperatives, but considered it an ordinary and necessary business expense rather than interest. On appeal the Eighth Circuit reversed the district court and held that the cost of Class C shares was not currently deductible. *M.F.A. Central Cooperative v. Bookwalter*, F. 2d (8th Cir. 1970) [Nos. 19,527-19,531, June 8, 1970].

<sup>8</sup> The New Orleans Bank does not issue certificates for the Class C shares. Thus, Class C shares are really only credits entered on the books of the bank in units of \$100 and fractional parts thereof.

<sup>9</sup> The Bank's Class C shares have changed hands only at the liquidation of a cooperative or its merger with another.

shares.<sup>10</sup> While the governing legislation provides that Class C shares may be retired at some date in the future, retirement will be at par (\$100) and must await the prior retirement of all Class A stock and all senior Class B shares. Retirement is also subject to the discretion of officials of the bank system. Until this uncertain retirement date,<sup>11</sup> the shares have no value to taxpayers in the usual sense. The Bank will not accept Class C shares in satisfaction of future "interest override" obligations, nor will it accept Class C shares as collateral for a loan. These factors, the limited marketability and limited value of the shares themselves, make application of the normal "willing buyer and willing seller" standard, for determining fair market value,<sup>12</sup> unfeasible.

The government appears to concede that these shares have no market value,<sup>13</sup> but urges that they possess an "intrinsic" or "intangible" value in taxpayers' hands which renders their cost a capital investment. First, it contends that taxpayers benefit from low cost loans and other Bank services because of the existence of the banking system assured through their continued purchases of Class C stock. As has been noted, however, the right to Bank services is established by the purchase of the initial qualifying shares. The government also points to the history of the Banks for Cooperatives<sup>14</sup> which evidences a

<sup>10</sup> 12 U.S.C. §1134(d)(c).

<sup>11</sup> For purpose of valuation, the *Penn Yan* court accepted 30 or 31 years as the period required before the stock would be retired based on the history of the Springfield Bank. It is not clear to what extent this figure reflected the discretion of the bank officials or other factors which could operate to defeat or prolong recovery.

<sup>12</sup> [Fair market value] is the price at which property will change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts.

*Willow Terrace Dev. Co. v. Commissioner*, 345 F. 2d 933, 936 (5th Cir. 1965).

<sup>13</sup> The Government states in its brief:

"In truth, because of the special characteristics of the stock there is no reasonable and determinable market value which can be assigned to it. As one authority puts it [Packel, *Law of Cooperatives* (3d ed.), Sec. 45(d) at 234.]: The circumstances surrounding the issuance of revolving fund certificates are often such that no particular market value can be ascribed to the certificate even though it refers to a sum certain."

<sup>14</sup> The history, organization, and capital structure of the Banks for Cooperatives is discussed by the court in *Penn Yan*, 417 F. 2d at 1373-1376.

Congressional intention ultimately to withdraw all government investment from the system. This is to be accomplished by the retirement of Class A stock as the federal investment it represents is replaced by Class C investment through purchases by cooperatives and receipt by them of "patronage refunds." The government urges that when all Class A stock has been retired, the revolving fund method of capitalization, common to cooperative financing, will prevail and the participating cooperatives will be the sole owners of a valuable financial institution. It should be noted that ownership here is not synonymous with control.

Prior to 1964, the holders of Class C stock of each [regional] bank could elect only one of its seven directors, and since 1964, they have elected two of the seven. The other five directors are elected by the local district production credit associations (two members), and the local district Federal Land Bank Associations (two members), with the seventh being appointed by the Governor of the Farm Credit Administration.<sup>15</sup>

With their share of control in the Bank thus limited, the fact that Class C shareholders were having capital they supplied substituted for that previously furnished by the government can scarcely be seen as enhancing the value of their shares. In *Penn Yan Agway Cooperative, Inc. v. United States*,<sup>16</sup> the Court of the Claims rejected the same government argument—that the Class C share possessed intangible value. The court stated:

[T]he cold fact remains that when plaintiff cooperative shareholder paid the \$407 for the 4.7 shares, it received stock which was greatly less valuable from an economic and financial standpoint than the purchase price required by law and the terms of the loan agreements. The "intangible benefits" bestowed by Congress on farmers' cooperatives generally do not alter this fact . . . The required purchase of such stock gave plaintiff no economic or financial benefit other than the circumstance that it could not have obtained the loan with its

<sup>15</sup> *Penn Yan Agway Cooperative, Inc. v. United States*, 417 F. 2d 1372, 1375 (Ct. Cl. 1960).

<sup>16</sup> 417 F. 2d 1372 (Ct. Cl. 1959).

favorable interest rate without fulfillment of the statutory requirement. But in the extremely practical field of taxation, in which substance prevails over form, it cannot reasonably be concluded under the circumstances that Congress has granted favors to cooperatives in furtherance of agricultural policies and taken them away (on the theory of intangible benefits) in whole or part in the field of raising of public revenues. It is obvious under the facts of this case that plaintiff did not consider, nor could it reasonably be held to have considered, that its required payment of \$407 for such stock, was an investment, as no return on such purported investment could be realized, except repayment of the bare purchase price delayed for many years.<sup>17</sup>

In *Penn Yan*, the cooperative shareholder assigned a value of \$6.90 to its Class C shares and introduced expert testimony tending to support this general figure as a reasonable estimate of the shares' fair market value. The Court of Claims approved the cooperative's evaluation. In *M.F.A. Central Cooperative v. Bookwalter*,<sup>18</sup> the district court concluded that Class C shares in the St. Louis Bank for Cooperatives had no fair market value at all. This conclusion was reversed by the Eighth Circuit which stated, "While the Class C stock has no established market value, it has a substantial book value and while it is likely not worth its par value at the time it is issued, it certainly has substantial value."<sup>19</sup> It should be noted that there is a considerable difference, as to the factors affecting value, between the shares of the St. Louis bank and those involved here.<sup>20</sup> In the present case, considering the nature of the Class C stock and the testimony as to its value adduced in the district court, that court was not clearly erroneous in determining that the Class

<sup>17</sup> *Id.* at 1377-1378.

<sup>18</sup> 286 F. Supp. 956 (E.D. Mo. 1968).

<sup>19</sup> *M.F.A. Central Cooperative v. Bookwalter*, F. 2d (8th Cir. 1970) [Nos. 19,527-19,531, June 8, 1970].

<sup>20</sup> From statements contained in briefs filed in this court, it appears that by June 30, 1967 the St. Louis Bank had completely retired its Class A shares and substantially reduced the amount of Class B investment. As a consequence it was able to redeem all Class C shares issued during the fiscal year ending June 30, 1956. The M.F.A. Cooperative had purchased St. Louis Class C shares from other cooperatives, and it appears that transactions between cooperatives were not uncommon.

C shares had no fair market value and no more than a nominal value to the taxpayers.<sup>21</sup>

## II

Notwithstanding the absence of a fair market value for the Class C shares, the government contends that taxpayers were not entitled to deduct any portion of their purchase price. It cites *Montana Power Co. v. United States*,<sup>22</sup> contending:

If one buys something and pays more than it is worth, and more than he can resell it for, there are no immediate tax consequences of this everyday occurrence. . . .

He must "realize" his bad bargain, his loss, by selling.

We do not dispute the soundness of this tax principle, but consider it inapplicable to the present case.<sup>23</sup> The government advanced the same argument in the *Penn Yan* case. The Court of Claims rejected it stating:

[I]t would be unfair to apply such a doctrine in the circumstances where disposition by the plaintiff of the Class C stock was a practical impossibility due to lack of a market, which resulted from the statutory restrictions placed upon such stock under the capitalization formula prescribed by law for the banks for cooperatives.<sup>24</sup>

*Montana Power* and the other cases relied on by the government are readily distinguished for the present situation. Taxpayers in the instant case have not been the victims of a bad bargain in the traditional sense;<sup>25</sup> they were required to make continued purchases of Class C stock in order to secure loans from the Bank. Neither did taxpayers acquire an asset of continuing value, though less than the purchase price;<sup>26</sup> the

<sup>21</sup> Rule 52(a) Fed. R. Civ. Pro.

<sup>22</sup> 159 F. Supp. 593, 595 (Ct. Cl.), cert. denied, 358 U.S. 842 (1963).

<sup>23</sup> See *Ancl Green & Co.*, 38 T.C. 125 (1962); *McMillian Mortgage Co.*, 36 T.C. 924 (1961). These cases are thoroughly discussed in *Penn Yan*, 417 F. 2d at 1380-1381.

<sup>24</sup> 417 F. 2d at 1379.

<sup>25</sup> See *Montana Power Co. v. United States*, 159 F. Supp. 593 (Ct. Cl. 1958).

<sup>26</sup> See *Dresser v. United States*, 55 F. 2d 499, 512 (Ct. Cl.), cert. denied, 287 U.S. 635 (1932); *Koppers Co. v. United States*, 278 F. 2d 948, 949 (Ct. Cl. 1960).



Class C shares were of no appreciable value to the taxpayers. It is at odds with the incisive realism required in determining the tax consequences of ambiguous transactions to treat these purchases as "investments"; they were something else.<sup>27</sup>

We agree with the trial court and with the Court of Claims in *Penn Yan*, that the purchase price of the Class C stock (in excess of the nominal value assigned it by taxpayers) is deductible as interest in the year of purchase. Section 163(a) of the Code<sup>28</sup> provides, "There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness." The interest which is deductible under this section is defined as, "the amount one has contracted to pay for the use of borrowed money."<sup>29</sup> As we have noted the Class C stock was without practical value to the taxpayers. Their only reason for acquiring the shares was as a prerequisite for continued borrowing from the Bank. It was in effect a bonus or premium paid in addition to the usual interest, and comes within the meaning of interest under 163(a).<sup>30</sup> The *Penn Yan* court supported its similar decision with the proposition borrowed from usury cases that:

[I]f as a condition to the making of a loan at an apparently permissible rate of interest, the lender requires the borrower to sell property to him at less than its

<sup>27</sup> One decision on this point appears to be at odds with that of the Eighth Circuit in *M.F.A. Central Cooperative v. Bookwalter*, — F. 2d — (8th Cir. 1970) [Nos. 19,527-19,531, June 8, 1970]. Insofar as that court's decision is not attributable to the difference in value of the St. Louis shares, we are simply unable to agree. If we concluded, as did the Eighth Circuit, that the "interest override" payments were made to acquire Class C shares as capital assets, we would agree that recognition of gain or loss must ordinarily await realization through sale or exchange. However, we agree with the court below that, for tax purposes, the bulk of these payments were not *actually* made to acquire an asset.

<sup>28</sup> 26 U.S.C. § 163(a).

<sup>29</sup> *Old Colony Bk. v. Commissioner*, 284 U.S. 552, 560 (1932).

<sup>30</sup> *Wiggin Terminals, Inc. v. United States*, 36 F.2d 893 (1st Cir. 1929); *L-R Heat Treating Co.*, 28 T.C. 894 (1957); *Court Holding Co.*, 2 T.C. 531, 536 (1943), *rev'd on other grounds*, 143 F.2d 823 (5th Cir. 1944), court of appeals *rev'd* and tax court *aff'd* on other grounds, 324 U.S. 331 (1945). These cases are offered for the same proposition by the Court of Claims in *Penn Yan*, 417 F.2d at 1379.

value or to purchase property from him at an excessive price, the difference represents interest. . . .<sup>31</sup>

In M.F.A., the district court held that the amounts paid by the plaintiff cooperative for Class C shares of the St. Louis Bank for Cooperatives were not deductible as interest under § 163(a),<sup>32</sup> but allowed a current deduction as an ordinary and necessary business expense under § 162(a).<sup>33</sup> The district court distinguished the cases allowing interest deductions for amounts paid as a bonus or premium to induce a loan,<sup>34</sup> since the debtors in those cases received nothing in return for the bonus but the use of the loaned money while the M.F.A. Cooperative had received Class C stock. Because of the peculiar nature of the Class C shares, we find this distinction unacceptable. As the district court itself observed:

This Class C stock purchased quarterly was of absolutely no use or benefit to M.F.A. Central Cooperative. . . . The only reason it was purchased was because M.F.A. Central wanted to borrow money from the St. Louis Bank for Cooperatives and the agreement to purchase Class C stock was imposed as a condition of the loan. It is impossible to separate the loan from the purchase of the stock. One was the motivation for the other.<sup>35</sup>

The district court in *M.F.A.* also considered the loan agreement as significant evidence that the parties understood the obligations to purchase the Class C stock to be apart from the interest requirements. We do not feel that the attitude of the parties is controlling. We agree with the Court of Claims in *Penn Yan*:

<sup>31</sup> 417 F.2d at 1379; quoting, *Memorial Gardens v. Everett Vinson & Assoc.*, 264 F.2d 282, 285 (10th Cir. 1959).

<sup>32</sup> While the Eighth Circuit reversed the district court insofar as it allowed a deduction as a business expense, it adopted the district court's opinion on the question of interest. *M.F.A. Central Cooperative v. Bookwalter*, F.2d (8th Cir. 1970) [Nos. 19,527-19,531, June 8, 1970].

<sup>33</sup> 26 U.S.C. § 162(a).

<sup>34</sup> See note 30 *supra*.

<sup>35</sup> 286 F. Supp. at 961.

that a current deduction was proper and that the appropriate deduction lies under § 163(a).<sup>36</sup> As that court noted this is more logical than the § 162(a) treatment initially given the expenses by the district court in *M.F.A.*, "particularly because the amount of such stock required to be purchased by law and by the loan agreements involved was measured by a percentage of the interest payable on plaintiff's outstanding loan obligations to the bank issuing the stock."<sup>37</sup>

Accordingly, the judgment of the district court is **AFFIRMED**.

GODBOLD, Circuit Judge, dissenting:

The majority opinion is a demonstration of what one of the few authorities on the law of cooperatives has counselled against:

The entire field of cooperative corporation law is so relatively new, the basic principles of the cooperative plan are so fundamentally different from those of corporations for profit, and the temporary or interim character of the capital required for proper functioning of a cooperative is so different from the permanent share capital of other business corporations, that even well established concepts in the field of business corporation law cannot safely be applied to cooperative corporations without careful understanding of the reasons underlying those principles and the applicability or inapplicability of those reasons to cooperatives. The fable of the three blind men's impressions of an elephant holds a pointed moral for judges and lawyers approaching the problems of cooperative corporation law and, particularly, the problems of financial structure and operation of cooperatives. Revolving capital cannot be assumed to result from the creation of either an exclusively debtor-creditor relationship or an exclusively corporation-shareholder relationship. Rather it involves a blending of certain elements of both, and frequently something

<sup>36</sup> The quid pro quo for taxpayer's present deduction for an interest expense will arise when and if the Class C shares are redeemed. In that event taxpayers must take \$99 into ordinary income. *J. Chommie*, *Federal Income Tax* § 17 at 33 (1968); *I. J. Mertens*, *Federal Income Tax* § 7.34 et seq. (1969).

<sup>37</sup> 417 F.2d at 1382.

new has been added as well. The resultant product is *sui generis*. In the long run, the public interest will best be served by thorough, patient, and understanding comprehension of what participants in a cooperative enterprise are trying to achieve, rather than by unwarranted assumption that new legal relationships arising from cooperative business transactions and organizations must be neatly and quickly, albeit somewhat forcibly, classified according to preexisting legal concepts developed under different conditions for different purposes in different kinds of transactions and organizations.

Nieman, *Revolving Capital in Stock Cooperative Corporations*, 13 *Law and Contemporary Problems* 393 at 402 (1948).

The taxpayers are incorporated farmers' cooperatives. In issue is the tax treatment of amounts which they have paid for Class C stock which they hold of the New Orleans Bank for Cooperatives, an incorporated stock cooperative of which they are members and from whom they borrow.<sup>1</sup> The taxpayers say on the one hand that the amounts were not paid for a capital asset, which under 26 U.S.C. (1964 ed.) § 1221 is "property held by the taxpayer" (with designated exceptions none of which is contended to be applicable). They say that in truth all or substantially all of the amounts paid, though cast in the form of the purchase price of capital stock, really were amounts which they had contracted to pay for the use of borrowed money and therefore were interest.<sup>2</sup> As probative of both of these contentions their underlying argument is that the Class C stock lacks many if the usual characteristics of stock and that it has only nominal value. The government contends the stock is a capital asset, and, recognizing that it may not have fair market value in the usual sense of a willing buyer and a willing seller, says it has intrinsic value.

Once one grasps the function of this particular stock in an institution organized by the Congress as a cooperative<sup>3</sup> it is

<sup>1</sup> The purchases were made by Coastal between 1958 and 1963 in the total amount of \$211,799.68, and by Mississippi Chemical between 1961 and 1963 in the total amount of \$55,113.19. Tax refunds ordered by the District Court are \$265,044.35 to Coastal and \$85,298.51 to Mississippi Chemical.

<sup>2</sup> E.g. *Old Colony R. Co. v. Commissioner*, 284 U.S. 552, 76 L.Ed. 484 (1932).

<sup>3</sup> Under a charter issued by the Farm Credit Administration.

seen that the stock is a capital asset, "property held by the taxpayer," although it does not have the usual characteristics of stock in a commercial enterprise organized under general corporation laws. Once that is seen—if not before—the contention that the payments for Class C stock are interest falls.

The Eighth Circuit in *M.F.A. Central Cooperative v. Bookwalter*, F. 2d [8th Cir., No. 19,527-531, June 8, 1970], has reached the same conclusion which I reach. That court held that the required quarterly investments in Class C stock were payments for capital assets. It affirmed the holding of the District Court<sup>4</sup> that the payments were not interest, and reversed the holding that they were ordinary and necessary business expenses. In so doing it considered *Penn Yan Aquway Cooperative v. United States*, 417 F. 2d 1372 (Ct. Cl. 1969) and the District Court opinion in the present case and would not follow them.<sup>5</sup>

1.

Central to this case is the fact that the New Orleans Bank for Cooperatives is itself a cooperative. "A cooperative is an association which furnishes an economic service without entrepreneur profit and which is owned and controlled on a substantially equal basis by those for whom the association is rendering service. . . . '[E]ntrepreneur profit' . . . really represents the antithesis of the benefits normally ascribable to cooperatives. 'Entrepreneur profit' is used in the true economic sense of a return for the speculative or risk element in an enterprise. In a cooperative, all the members assume, in a broad sense, the economic risk, and they contemplate no return for the undertaking of the risk." Packel, *The Law of Cooperatives*, § 1, p. 2-3 (3d ed.).

"The primary objective of an ordinary cooperative is not charitable. . . . In the normal case . . . the cooperative is designed to further the economic interest or welfare of its members. Economic welfare does not merely refer to financial savings or increased monetary returns. It cuts much deeper and takes into consideration basic aspects of economic life. Quality

<sup>4</sup> *M.F.A. Central Cooperative v. Bookwalter*, 286 F. Supp. 956 (E.D. Mo. (1968)).

<sup>5</sup> *Penn Yan* held that the purchase price of Class C stock was interest to the extent that it exceeded \$6.60 per share, which the taxpayer conceded was its value.



of product, decency of service, ownership, control and satisfaction of self-help are important benefits of cooperatives and sometimes are even more important than the direct financial benefits." *Id.* at pp. 6-7. Among the normal attributes of a cooperative are:

- (3) transfer of ownership interests is prohibited or limited;
  - (4) capital investment receives either no return or a limited return;
  - (5) economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association;
- Id.* at 3.

Justice Brandeis pointed out in his dissent in *First v. Corporation Commission*, 278 U.S. 515, 536, 73 L.Ed. 483, 495 (1929) that farm cooperative seek, in addition to the immediate and direct financial advantage of members, a type of economic democracy as well in which there is equitable assumption of responsibilities and equitable distribution of benefits, and that in addition to financial benefits they promote and effect cooperation among farmers. These objectives, coupled with that of economic strength springing from the combination in a single institution of the combined effort and contributions of all, is important in grasping the relationship between the appellant cooperatives and the cooperative financial institution from which they borrow.

## 2.

As Professor Nieman points out, the capital of a cooperative, insofar as permanence or impermanence of shares of stock or other units of capital is concerned, is essentially different from the capital of other business corporations.<sup>6</sup> The commercial shareholder does not anticipate his contribution to capital will be returned to him until dissolution. Prior to dissolution he can recover his contribution by selling his shares to another.

A cooperative's capital, however, more often represents essentially a loan or temporary contribution by its patrons to finance certain economic services for them.

<sup>6</sup> Nieman, *supra*, at 393.

The patron-member or patron-shareholder expects that the capital which he contributes will be returned to him prior to dissolution, but not until his own and other patrons' subsequent contributions to capital render his earlier contribution unnecessary to finance the cooperative's facilities and operations. He does not expect to wait until dissolution, and he knows that his shares are not readily salable. He looks to the cooperative to return his capital contributions to him if, and as soon as, it can do so.

*Nieman, supra*, at 393-94. This concept is a formalization of early, informal cooperative arrangements.<sup>7</sup> As cooperatives became more permanent and more continuous in their operations the patron who temporarily put his capital at the service of the group, footnote 7, *supra*, no longer took it home with him when his transaction was over but left it for the use of the continuing activity, though not for its permanent use. But the bedrock principle remained that he received no return or a limited return on his investment in capital.

Most of the formalized early cooperatives were corporations, which organized and structured their capital under the general corporation laws, the only laws available, though unrelated to the particular capital requirements of the cooperative. *Id.* at 393 and 395. "There ever since has been a trial-and-error effort to develop for cooperatives a kind of capital more adequately suited to their peculiar needs and still within the corporate form." *Id.* at 395.<sup>8</sup>

<sup>7</sup> "When more than a century ago, a group of Ohio farmers joined together to ship their cattle to market at Pittsburgh, each of them presumably furnished his share of the cattle, wagons, and equipment which were the capital for the expedition; and each participant's capital was returned to him upon the completion of the project. The horses, wagons, machinery, and labor required for barn raisings or threshing were furnished by the participants, and were returned to them after each job or threshing season. Each participant ceased to provide such capital, and capital previously furnished was returned to him, when he ceased farming and, thus, no longer had need for the barn-raising or threshing services and equipment of his neighbors. In such informal, cooperative enterprises, the temporary nature of the capital employed was plain."

*Id.* at 394.

<sup>8</sup> Today, in most jurisdictions, a cooperative can incorporate either with or without capital stock. Packel, *supra*, § 5(c) at p. 35.

As cooperatives evolved, necessity imposed the creation of a new kind of temporary or interim capital, revolving fund capital.

Provision frequently was made for the return of a member's share of the capital upon the termination of his membership. The risk to the cooperative's financial integrity in the event that a substantial number of members should withdraw and demand the return of their membership capital at the same time required modification of the right to demand a return of membership capital promptly upon termination of membership. Provision was made to suspend the rights and privileges of membership or to retain the member's share of the capital until such time as the cooperative should be financially able to pay it out without undue prejudice to other members or creditors. The problems incident to the existence of permanent capital, even membership capital repayable upon termination or suspension of membership or reasonably soon thereafter, eventually, were met by the creation of a new kind of temporary or interim capital which has now become quite common, although peculiar to cooperatives—that is, revolving-fund capital.

*Id.* "The revolving fund plan has been likened to a water wheel, picking up water, using it to create the power that turns the mill machinery, and returning the water to the mill-stream." *Id.* at 396. As the fund of capital becomes adequate it is maintained at that level by continuing to receive each year new contributions to capital by current patrons, and to the extent that new contributions increase the capital above that needed the excess is returned to the patrons who made the earliest contributions. Necessarily there is some awkwardness in the use of shares of stock in a cooperative with revolving capital, but these are tempered by employing different classes of shares. *Id.* at 398-402.

The relationship of the stock cooperative to the member-stockholder who contributes capital is not strictly debtor-creditor, for there is no loan with a maturity date, nor corporation-shareholder in the commercial sense. Though styled corporation-shareholder it is in fact *sui generis*. Nieman, *supra*, at 397 and 402.

### 3.

It is against this background of recognized principles of cooperative organization and operation that Congress has estab-

lished a comprehensive farm credit system, which is but a part of a broader program of encouraging the organization and development of effective cooperatives.<sup>9</sup> The cornerstone was the Federal Farm Loan Act of 1916,<sup>10</sup> establishing the federal land banks with goals of providing low cost farm credit, promoting farmer ownership of the banks, and established and stimulating among farmers cooperative effort.<sup>11</sup> Farmers could not borrow directly but were required to form national farm loan associations, which, operating on cooperative principles, would serve as middlemen in securing loans. These cooperative associations were required to purchase stock in the federal land banks in amounts relating to the size of loans (5 per cent of face.)<sup>12</sup>

The Farm Credit Act of 1933<sup>13</sup> established a much broader structure of farm credit around the original twelve federal land banks. Among the new institutions were the Central Bank for Cooperatives and twelve regional banks for cooperatives which had the specific function of lending to farmers' cooperatives. The initial capital, comparatively nominal, was furnished by the United States in the form of \$110 million, divided between the twelve regional banks and the Central Bank.<sup>14</sup> Each regional bank had but one class of stock. Each borrowing cooperative had to become a member of the regional cooperative bank and a contributor to its capital by purchasing stock (or subscribing to a guaranty fund) in an amount related to the size of his loan. The purchase price of the stock was paid when the loan was closed, either by being deducted from the proceeds or added to the amount of the loan. However, upon repaying his loan a borrower could withdraw his contribution to capital by demanding redemption of his stock. These withdrawals caused the capital funds remaining in the banks to be insufficient to permit them to operate on a sound basis and to

<sup>9</sup> Packel, *supra*, § 60, p. 275 et seq.

<sup>10</sup> 39 Stat. 360.

<sup>11</sup> S. Rep. No. 144, 64th Cong., 1st Sess. pp. 2, 4 and 10.

<sup>12</sup> The Senate Report said of this requirement:

"At the outset we secure the personal interest of the borrower by requiring him to contribute to the capital of the loan association 5 per cent of the face of his loan. This personal stake makes the . . . borrower a cooperator."

S. Rep. No. 144, *supra*, p. 10.

<sup>13</sup> 48 Stat. 257.

<sup>14</sup> 2 U.S. Code & Admin. News 1955, p. 2949, at 2950.

meet the needs of the farmer cooperatives for credit.<sup>15</sup> This is the difficulty which, as Professor Nieman points out, gives rise to revolving fund capital. In 1955 Congress changed the capital structure of the 12 regional banks and the Central Bank for Cooperatives to the revolving fund system.

The Farm Credit Act of 1953 required a study of methods by which to effect increased borrower participation in the management, control, and ultimate ownership of institutions operating under the permanent system of agricultural credit available through the Farm Credit Administration. 2 U.S. Code & Admin. News 1955 at 2947, 2949. The Farm Credit Act of 1955, 69 Stat. 655, which overhauled the entire system of farm credit, was the result of that study. The Senate Committee reported that the House Bill (in no relevant aspect different from the Senate Bill or the Act as passed) "would be a forward step in the goal of having private borrowers owning and managing these credit agencies." *Id.* at 2948.

The House Committee Report described the purpose of the legislation in this way:

The primary purpose of title I of the bill is to provide a plan under which the banks [for cooperatives] would be organized on a truly cooperative basis. Borrowing cooperatives would continually make capital contributions to the system so long as they used its credit service. Each year final net savings (after taxes, dividends, reserves, and surplus requirements) would be distributed as patronage refunds to borrowing cooperatives in the form of capital stock, all of which capital would remain in the system until all of the capital stock of the United States had been retired. Each year Government capital would be retired in an amount equal to the required stock contributions or and the patronage refunds to the borrowing cooperatives.

*Id.* at 2951.

The Act established a pure revolving fund capital structure, *Penn Yan, supra*, 417 F. 2d at 1374. It created Classes A, B and C stock, A owned by the government (nonvoting and no dividends); B owned by investors (nonvoting but dividend paying); and C (voting but only one vote to a member, no

<sup>15</sup> 2 U.S. Code & Admin. News 1955 at 2951; *Penn Yan, supra*, at 1374.



dividends), 12 U.S.C. § 1134d. Each year, as capital is added through investment in Class C shares by each borrower, and through distribution to borrowers of patronage refunds in the form of Class C shares, an equal amount of Class A shares is retired. Retirement of Class C shares will commence when all Class A stock has been retired, except that as Class C is retired all earlier issued Class B must also be called for retirement.<sup>16</sup> There is no retirement of stock on demand.

In lieu of the one-time purchase of stock previously required of each borrower, the 1955 Act substitutes a system of scheduled purchases of Class C stock. "[E]ach borrower . . . shall be required to invest quarterly in class C stock an amount equal to not less than 10 nor more than 25 per centum . . . of the amount of interest payable by it to the bank during the calendar quarter. Payment for such stock shall be made quarterly or when the regular interest payments of the borrower are payable." 12 U.S.C. § 1134d(a)(3). Prior to the 1955 Act required purchases were unrelated to interest but keyed to the amount of the loan. Post-1955 purchases are keyed to interest only as a measure of the amount of stock to be purchased. It is obvious that they are keyed to payments of interest for convenience of billing and payment—the borrower pays his scheduled contribution to capital when he makes his interest payment, whether quarterly or otherwise. Amounts due for interest and investment in stock are rendered in the same bill, although separately stated and identified. A borrower who owns Class B stock and does not want to make the required investment in Class C stock by paying cash can convert his Class B to Class C 12 U.S.C. § 1134d(a)(3). This has been done by the New Orleans Bank in many instances, always on a dollar-for-dollar basis, \$100 par value of Class C for \$100 par value of Class B.<sup>16A</sup>

<sup>16</sup> The Class B shares are of nominal importance. In 1963 they constituted only approximately 5 per cent of total stock outstanding in the New Orleans Bank.

<sup>16A</sup> The necessity of not being hypnotized by the phraseology of the commercial corporation is pointed up by 12 U.S.C. § 1134d(b). If a borrower is not authorized under the law of the state of its organization to take stock in the bank, it must deposit in the "guaranty fund" of the bank the amount it would have invested in stock. This is the contribution to capital by the cooperative patron in its pure sense, unencumbered by share of stock con-

Pre-1955 stock can be converted to Class B or Class C. This has been done on the same basis of dollar for dollar of par value. Some holders of pre-1955 stock have been allowed to apply the full par value thereof against their loans outstanding.

The bank has a statutory lien on the borrower's Class C stock. In cases where it has been exercised against a defaulting borrower, the full par value of the stock has been applied to the loan balance.

In 1956, promptly after the 1955 Act went into effect, the New Orleans Bank established 15 per cent of interest payable during the quarter as the amount of quarterly investment in stock required of the borrower. It did so pursuant to a policy determination that it hoped to retire all Class A stock by 1976, a 20-year period, and projected the 15 per cent figure as sufficient to achieve that. Retirement has been carried out each year as planned except that the rate of retirement has been better than expected. By 1963 Class A stock had been reduced from the 1956 level of \$7,000,000 to \$4,880,000, as against the projected level for that year of \$5,150,000. In 1966 the Bank estimated informally that all Class A stock would be retired by 1972 or 1973.<sup>17</sup>

## 4.

Purchase of a single Class C share is a prerequisite to eligibility to borrow from the bank, 12 U.S.C. §-1134d(a)(3). The District Court, the majority in this case and the court in *Penn Yan* viewed the purchase of this single share as conferring upon the purchaser the full spectrum of benefits that could flow to it from stock ownership, so that no additional benefit could accrue by its securing a loan and, as an incident thereof, purchasing additional stock as required. This misses the whole point of the cooperative structure of the banks. The thrust of the Congressional scheme is the promotion of permanent institutions to supply low cost credit to farmers' cooperatives and to

ceptualism. Patronage refunds to such a borrower are credited against its contributions to the fund. Its deposit is returned to it in the same manner as Class C stock is redeemed.

<sup>17</sup> The supplemental brief of the United States quotes from an exhibit in the M.F.A. record which states that five of the regional banks have retired all Class A stock and that it is anticipated that all others will accomplish full retirement of the government's investment by 1971.

foster the creation of additional cooperatives.<sup>18</sup> Ownership of the bank ultimately will be in the cooperatives. They will also participate in management, to the extent of the private sector of the joint government-private management scheme. A purchase of Class C stock does not increase the capital of the bank or its current lending capacity, since Class A stock in a like amount is retired. But each purchase moves the bank toward its ultimate institutional status as a farmer-owned cooperative supplying low cost farm credit to these taxpayers and others like them. The government "primed the pump" by "revolving in" the initial capital of a joint government-private undertaking, the societal values of which it is not the judicial function to question, and from which the government's capital was designed ultimately to be wholly "revolved out." To view the process of replacing government capital by private capital, as do taxpayers as producing no benefit to anyone except the government which gets its money back, is to misunderstand both the purpose of Congress and the institutional value of the cooperative bank to the cooperatives which will own it and borrow from it.<sup>19</sup>

There are institutional values other than that of continued availability of low cost credit. There is the inherent cooperative concept that it is beneficial to channel into a single integrated effort the assets and needs of the group of patrons. There is the benefit of simple economic power, through ultimate substantial ownership of the established, fully capitalized, staffed, and accepted financial institution.<sup>19A</sup>

<sup>18</sup> The 1963 report of the New Orleans Bank states that more than half of the cooperatives regularly financed by it are the outgrowth of conferences held by its staff with groups of farmers contemplating the establishment of new cooperatives.

<sup>19</sup> The benefit to these taxpayers, of the New Orleans Bank as a source of low cost credit, is quickly seen by a look at the years here in question. Their purchases of Class C stock for these years were, in round figures: Coastal (1958-63)—\$11,700; \$33,900; \$47,400; \$41,700; \$35,000; and \$42,100. Mississippi (1961-63)—\$18,900; \$16,800; and \$19,300. Each purchase represents 15 percent of the interest paid for the year. Interest usually was between 4 and 5 percent. A simple calculation reveals the massive extent of the loans which they were enjoying. From its organization through fiscal 1963 the New Orleans Bank made loans to its limited class of borrowers in its region (Louisiana, Mississippi and Alabama) of more than 618 million.

<sup>19A</sup> Also it should be noted that the major source of loan funds for each bank is not its capital but funds which it obtains by borrowing from the

Other benefits are perhaps more easily perceived because in the more conventional garb of dollars. As borrowers, taxpayers qualify for patronage refunds, distributed to them annually in proportion—as in all cooperatives—to their use of the services offered, thus in this instance measured by interest paid. In 1958–63 Coastal received patronage refunds in Class C stock of \$289,309.81. In 1961–63 Mississippi received \$81,272.57. Together these are 14 percent of *all* Class C stock (purchases and refunds) outstanding at the end of fiscal 1963. When their purchases of Class C stock for those years are added, it is revealed that together the taxpayers owned 24 percent of the outstanding Class C stock.

Also each bank allocates on its books each year to each patron, in proportion to interest paid by the patron, a portion of the amount by which the bank's contingency reserves exceed its needs.<sup>20</sup> For the same years as above, Coastal was allocated from surplus \$127,748.62, Mississippi \$35,771.48. This "allocated surplus" eventually is distributed in the form of Class C shares.<sup>21</sup> The patronage refunds and the allocated surplus are not a return of the borrower's contributed capital but distributions of earnings, not presently convertible to cash but in due course "revolved out" of the cooperative capital into cash to the borrower.

These benefits are measured by the borrower's use of services. But he does not qualify for them by the act alone of borrowing, only by borrowing plus contributing to capital. Congress could have chosen other approaches. A large contribution to capital to become eligible for service was a possibility, but this would be inconsistent with the cooperative concept of nominal financial outlay to become a patron (a small membership fee for the nonstock cooperative, a small purchase of stock for the stock cooperative), with the real and substantial contribution to capital made in proportion to use of services. It would be incon-

Central Bank and the federal intermediate credit banks and by sale of debentures in cooperation with other regional banks. This access to low cost funds, and government-assisted credit, continues after Class A stock is repaid.

<sup>20</sup> Included therein are like distributions which the regional bank receives from the Central Bank for cooperatives.

<sup>21</sup> The separate increments of value represented by the Class C stock (purchased and patronage refunds) and the allocated surplus are pointed out in *Columbia Bank for Cooperatives v. Lee*, 368 F.2d 934 (4th Cir. 1966).

sistent with the aim of fostering organization and growth of fledgling cooperatives. Congress could have required a large one-shot contribution when the loan is made, but it had discovered the disadvantages of this before 1955. It could have provided for adding to capital by higher interest rates carried forward into earned surplus, but this would be inconsistent with its purposes of offering low rates and at the same time shifting from government to private ownership through the normal revolutions of revolving fund capital.

## 5.

The *sui generis* stock of an incorporated cooperative need not have the same characteristics as ordinary commercial stock to be a capital asset. But the differences loom so large in the minds of the plaintiffs, of the District Court<sup>22</sup> and the majority in this court that brief comment is appropriate.

No Class C stock certificates are issued. A form for the certificates has been approved by the Farm Credit Administration, but the Board of Directors of the New Orleans Bank exercised the discretion given them by the bylaws not to issue certificates. The Bank reflects on its stock ledger the amount of each type of Class C stock owned and at the end of each fiscal year notifies each owner of the amount owned at the beginning and end of the year.<sup>23</sup>

The stock has no dividend and no growth potential. This is normal for a cooperative.

Only the first share of Class C stock carries a voting right. "One person one vote" is a basic cooperative principle, which

<sup>22</sup> The District Court, after emphasizing the differences, concluded that the stock "does not enjoy the usual attributes of shares of stock but are mere bookkeeping entries or devices." The District Court made no references to the peculiarities of cooperative financing. In fact its opinion does not even reveal that the New Orleans Bank is a cooperative.

<sup>23</sup> This system of recording stock ownership without issuing certificates is no surprise to any holder of shares of almost any one of the major mutual funds which employ the same method for shareholders authorizing automatic reinvestment of dividends and which, like the New Orleans Bank, notify the shareholder periodically of how many new shares he has acquired.

A certificate of stock is not the stock itself but only evidence of ownership. The rights and duties between corporation and stockholder exist apart from the certificate. 11 Fletcher, Corporations, § 5092 (Perm. ed.).



gives recognition to the concept of an economic democracy. Packel, *supra*, at 138-40.<sup>24</sup>

Class C shareholders will not enjoy sole control of the bank in the commercial sense even when all Class A stock is retired since they will not elect all directors of the joint board which administers it and other farm credit agencies of the region. This makes the stock different from some commercial stock<sup>25</sup> but no less a capital asset.

The stock is not<sup>26</sup> transferable except to other cooperatives and with the consent of the Bank.<sup>26</sup> This is usual in a cooperative. Packel, *supra*, pp. 3, 127. It is essential to keep out of the membership persons with interests antagonistic to the cooperative and is an effective means to keep patrons from transferring their interests at a profit. *Id.* at 127-128, and cases there cited.

## 6.

The majority center on, and repeatedly employ, the phrase "interest override" and even characterize the requirements of the statute in those terms. The term nowhere appears in the statute, the Congressional history, the loan agreements, or the quarterly bills sent taxpayers showing separately interest, principal and "C stock subscription." The President of the New Orleans Bank explained that the term had grown up in that regional bank and in turn had been picked up by its borrowers.

Class C stock purchased under the required investment provisions is shown in the stock ledger separate from that issued as patronage dividends, and under the heading "Investment in C Stock (Interest Override)." The President defined "interest override" as "the amount we require our borrowers to pay over and above interest for the purchase of C stock."

<sup>24</sup> The principle is carried forward into the Capper-Volstead Act under which a cooperative marketing association, if it wishes to enjoy immunity from the Sherman Act, must not allow a member more than one vote regardless of how much stock he owns. 7 U.S.C. §§ 291-292.

<sup>25</sup> Commercial preferred stock often is nonvoting, and nonvoting common of many companies is traded daily on the stock exchanges.

<sup>26</sup> There have been a few approved transfers incident to liquidation, merger or accommodation between cooperatives.

But compare *Columbia Bank for Cooperatives v. Lee*, 308 F.2d 934 (4th Cir. 1966), stating that once issued Class C Stock is transferable to any person.

The promissory notes signed by taxpayers provide for interest. Each separate loan agreement provides:

**Stock Purchase:** The association shall invest quarterly in Class C stock of the bank at its fair book value, not exceeding par, an amount equal to 15 percent of the amount of interest payable by the association to the bank on said loans for said calendar quarter or part thereof. The association shall pay for said Class C stock on the date interest is due and payable. . . .

7.

The plainly erroneous rule applied to the finding of the District Court that the Class C stock has only nominal value, may not be the basis of an affirmance. What has been said makes clear that the stock has, as the Eighth Circuit concluded in *MFA*, an intrinsic value. Also it is apparent that the District Court's finding was based on the erroneous basis of comparing the stock, characteristic by characteristic, with that of the usual commercial corporation and totally overlooking its value as a capital contribution to a cooperative under the plan of the Congress.

On the issue of value, in *Columbia Bank for Cooperatives v. Lee*, 368 F. 2d 934 (4th Cir. 1966), a bankrupt cooperative owned Class C stock of the Columbia regional bank with a par value (in round figures) of \$54,200, Class B stock with a par value of \$45,800, and there had been allocated to the bankrupt surplus of \$13,000, total \$113,000. The referee ordered the bank to allow a setoff of this \$113,000 against the cooperative's indebtedness to it of \$162,000, and the District Court affirmed.<sup>27</sup> Another cooperative had offered to buy the stock for \$50,000, which was 45 percent of its par value and allocated surplus. The Fourth Circuit held that the bank was not required to offset at par value and remanded for valuation by the referee. It declined to accept the single offer of \$50,000 as a reasonable reflection of true value and noted: "However thin the general market for these shares may be the continuing stream of borrowers from the bank provides it with a ready market." 368

<sup>27</sup> The New Orleans Bank in many instances has made just such a full offset without legal proceedings.

F. 2d at 940.<sup>28</sup> The Columbia Bank projected retirement of all Class A stock by 1967. New Orleans Bank stock may be worth less than 45 cents on the dollar because of the difference between projected 1967 retirement of Class A and projected 1972-1973 retirement. But the discount is not to \$1.00 per share or less. In the present case an expert familiar with cooperative financing presented a full and careful analysis of Class C stock of each year separately and assigned values ascending from \$3.42 per share for 1958 Class C stock to \$38.65 per share for that of 1963.

8.

My brothers have, in Professor Neiman's terms, felt the leg of the elephant and concluded that the beast is interest. A look at the concept of cooperatives, the legislative history, the expressed intent of Congress, the language of the statute, the books and records of the parties and the loan agreements signed by the taxpayers, reveals that it is an elephant after all. I would join with the Eighth Circuit and would reverse.

<sup>28</sup>On remand (not officially reported) no valuation by the referee was necessary. The parties agreed that the trustee would receive a credit in the amount of the value of bankrupt's stock plus allocated surplus, a total of \$112,094.97, and the trustee agreed to pay the bank cash of \$49,305.03, which was the balance of the bank's claim.

## JUDGMENT

United States Court of Appeals for the Fifth Circuit

October Term, 1969

No. 28271

D.C. Docket No. CA 1213 and 1214

MISSISSIPPI CHEMICAL CORPORATION,

PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDENT-APPELLANT

COASTAL CHEMICAL CORPORATION, PLAINTIFF-APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLANT

*Appeal from the United States District Court for the  
Southern District of Mississippi*

Before GEWIN, GODBOLD, and CLARK, Circuit Judges.

### JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

SEPTEMBER 14, 1970.

Issued as Mandate: October 6, 1970.

A true copy:

Test:

EDWARD W. WADSWORTH,  
Clerk, U.S. Court of Appeals, Fifth Circuit.

By CLAUDETTE STAIGER,  
Deputy.

New Orleans, Louisiana, October 6, 1970.

Supreme Court of the United States

No. 1082—OCTOBER TERM, 1970

UNITED STATES, PETITIONER

v.

MISSISSIPPI CHEMICAL CORPORATION, ET AL.

Order Allowing Certiorari. Filed February 22, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

Mr. Justice Blackmun took no part in the consideration or decision of this petition.

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